142-671

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 502. 154

EBENEZER B. CONVERS, PLAINTIFF IN ERROR,

vs.

THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 4, 1888.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 502.

EBENEZER B. CONVERS, PLAINTIFF IN ERROR,

vs.

THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Caption	1	1
Bond for costs	3	1
Transcript from State court (No. 20704)	4	2
Caption	4	2
Petition of A., T. & S. F. R. R. Co.	4	2
Affidavit of unknown owners	6	4
Order making Jas. H. Roberts *et al.* parties defendants	7	4
Notice of motion to make James H. Roberts *et al.* parties defendants	8	4
Petition of Jas. H. Roberts *et al.* to be made parties defendants	8	5
Summons	9	6
Sheriff's return	10	6
Order granting leave to make additional parties defendants	11	7
Affidavit of unknown owners	11	7
Affidavit of non-residence, &c.	12	8
Amendment to petition	13	8
Certificate of mailing notice	14	9
Appearance for executors of Jones estate	16	10
Summons	16	11
Sheriff's return	17	11
Summons	18	12
Sheriff's return	19	12
Cross-petition of Ebenezer B. Convers	21	14
Petition of Ebenezer B. Convers for removal	26	17

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 25, 1891.

	Original.	Print.
Bond for removal	28	18
Appearance, &c., of Andrew B. Price *et al.*	30	19
Appearance of International Bank *et al.*	33	21
Petition of Mary A. Joyce *et al.*	34	21
Notice of motion to make additional parties defendants	35	22
Order making Mary A. Joyce *et al.* parties defendants, &c.	36	23
Order for removal	36	23
Clerk's certificate	37	23
Appearance for Ebenezer B. Convers	39	24
Order granting leave to file amended cross-petition	40	24
Amendment to cross-petition	41	25
Bond for costs	43	26
Transcript from State court (No. 20705)	45	26
Caption	45	26
Petition of A., T. & S. F. R. R. Co.	45	27
Affidavit of unknown owners	49	29
Summons	50	29
Sheriff's return	51	30
Appearance of National Bank of Illinois and Wm. A. Haymond	51	30
Appearance of E. and C. Buckingham	52	31
Order granting leave to make additional parties defendants	53	31
Amended petition	53	31
Affidavit of non-residence, &c.	54	32
Affidavit of unknown owners	55	33
Certificate of mailing notice	55	33
Summons	57	34
Sheriff's return	58	35
Cross-petition of Ebenezer B. Convers	59	36
Petition of Ebenezer B. Convers for removal	65	39
Bond for removal	67	40
Appearance of Thos. Tully *et al.*	69	41
Appearance of Union Stock Yards and Transit Co.	70	42
Order for removal	70	42
Clerk's certificate	71	42
Appearance for Ebenezer B. Convers	72	43
Stipulation to consolidate causes	73	44
Order beginning trial	75	44
Order continuing trial	77	45
Order on verdict of jury	78	46
Judgment	81	47
Bill of exceptions	85	48
Plat	86	49
Form of verdict	91	51
Reasons for new trial	96	54
Motion in arrest of judgment	99	55
Bond	102	57
Clerk's certificate	104	57
Writ of error	105	58
Citation and proof of service of same	106	59
Assignment of errors	107	60

1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Romanzo Bunn, district judge of the United States for the western district of Wisconsin, on Tuesday, the twenty-seventh day of March, in the adjourned March term of said court, in the year of our Lord one thousand eight hundred and eighty-eight, and of our Independence the one hundred and twelfth year.

WM. H. BRADLEY, *Clerk.*

THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO
vs.
EBENEZER B. CONVERS, Impleaded with WILLIAM C. D. GRANNIS *et al*
} Petition to Condemn Land.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the third day of October, 1887, there was filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, a bond for costs and transcript of record from the county court of Cook county, Illinois, in said above-entitled cause;
2 which said bond and transcript are respectively in the words and figures following, to wit:

3 UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } *ss:*

Circuit Court. October Term, A. D. 1887.

THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO
vs.
EBENEZER B. CONVERS, Impleaded with WILLIAM C. D. GRANNIS *et al.*
} Proceedings to Condemn Real Estate.

I enter myself security for said Convers for costs in this cause and promise to pay all costs which against him may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by said Convers of any costs ordered or adjudged to be paid by him I hereby agree and stipulate that execution may issue against my property for any costs taxed against him.

Dated this third day of October, A. D. 1887.

FRANK STURGES.

Endorsed: Filed Oct. 3, 1887. Wm. H. Bradley, clerk.

STATE OF ILLINOIS, } ss:
County of Cook, }

Pleas before the Honorable Richard Prendergast, sole presiding judge of the county court of Cook county, in the State of Illinois, at a regular term of said county court of Cook county begun and holden at the court-house, in the city of Chicago, in said county and State, on the second Monday, being the twelfth day, of September, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States of America the one hundred and twelfth.

Present: The Honorable Richard Prendergast, judge of the county court of Cook county; Canute R. Matson, sheriff of Cook county.
Attest: HENRY WULFF, *Clerk.*

Be it remembered that heretofore, to wit, on the seventh day of June, in the year of our Lord one thousand eight hundred and eighty-seven, the same being one of the days of the May term of the county court of Cook county, the following petition was filed with the clerk of said court in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court Thereof.

ATCHISON, TOPEKA & SANTA FÉ RAILROAD COMPANY IN CHICAGO }
vs.
W. C. D. GRANNIS *et al.* }

To the Honorable Richard Prendergast, judge of said court:

5 Your petitioner, the Atchison, Topeka and Sante Fé Railroad Company in Chicago, respectfully represents that it is a corporation duly organized, existing, and doing business under the general laws of the State of Illinois, and that it has power, among other things, to construct, operate, and maintain a line of railroad from a point on the west line of Cook county, Illinois, near where the Desplaines river crosses the line of said county, thence by the most favorable route in an easterly or northeasterly direction to a point on the shore of Lake Michigan near the eastern extremity of sixteenth street, in the city of Chicago, Illinois, and over and upon the lands and property hereinafter described.

Your petitioner further shows that it has located its line of road over and upon the lands and property hereinafter described in said Cook county, and that the persons whose names follow the description of the said lands and property are the owners thereof, as appears by the records of said county, or have or claim some interest in the said lands or property described as follows, to wit: That part of the east half of section thirty (30), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian, lying be-

tween the west fork of the south branch of the Chicago river and the Illinois and Michigan canal, in said Cook county, Illinois.

William C. D. Grannis.
John J. P. Odell.
Hiram C. Wheeler.
International Bank.
Henry A. Kohn.
Julius Bauer.
Josiah L. Lombard.
Hiram Pearsons.
—— Patterson.
—— Cullerton.
Mat. Leonard.
Union National Bank.
Union Safe Deposit Company.
Huntington W. Jackson.
Julius Rosenthal.

6 And that there are other persons, unknown to your petitioner, who have or claim to have some interest in said lands and property, who are hereby made parties to this petition under the designation of "unknown owners," and that said lands and property are necessary to your petitioner for its right of way, side tracks, depots and depot grounds, freight yards, shops, and appurtenances for the construction and operation of its said line of railroad.

That your petitioner is unable to agree with the owners of and persons interested in said lands and property as to compensation which should be paid for the taking and use thereof by your petitioner.

Your petitioner therefore prays that the compensation to be paid to the several owners of and persons interested in said lands and property on account of the appropriation thereof by your petitioner for its railroad purposes aforesaid may be ascertained, and that such further proceedings may be had as are provided by law.

ATCHISON, TOPEKA AND SANTA FÉ
RAILROAD COMPANY IN CHICAGO,
By SANFORD B. FRENCH, *Its President.*

WILLIAMS AND THOMPSON,
Attorneys for Petitioner.

And afterwards, to wit, on the same day, there was filed with the clerk of said court a certain "affidavit of unknown owners" in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court Thereof.

ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO
vs.
W. C. D. GRANNIS *et al.*

7 S. B. French, being first duly sworn, on oath says that he is president *on* the plaintiff company in the above-entitled suit and makes this affidavit in its behalf; that he is informed and believes that certain persons other than those named in the petition filed in the above-entitled cause are interested in the property described in and sought to be taken under said petition, whose names are at present unknown to said petitioner or this affiant.

SANFORD B. FRENCH.

Subscribed and sworn to before me this sixth day of June, 1887.

E. C. PHELPS,
Notary Public. [SEAL.]

And afterwards, to wit, on the 15th day of June, A. D. 1887, the same being one of the days of the June term, A. D. 1887, of said court, the following, among other, proceedings were had by and before said court and entered of record, to wit:

ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY
vs.
W. C. D. GRANNIS *et al.*
Condemnation.

This day, on motion — the attorneys for James H. Roberts, John H. Madden, Ann Madden, and Elizabeth Nelligar and on proof of service of notice on said petitioner that this motion would be made at this time, it is ordered by the court that the above-named parties be, and they are hereby, made parties defendant to the petition herein.

And afterwards, to wit, on the same day, there was filed with the clerk of said court a certain "notice of motion" in words and figures as follows, to wit:

8 In the County Court of Cook County, Illinois.

ATCHISON, TOPEKA AND SANTA FÉ R. R. Co.
vs.
W. C. D. GRANNIS *et al.*

To Messrs. Williams & Thompson, attorneys for petitioner:

Please take notice that on Wednesday morning next, the 15th instant, at the opening of the court, we will apply to his honor the judge of said court to make James H. Roberts, John H. Madden,

Ann Madden, and Elizabeth Nelligar parties defendant to the above-entitled proceedings, when and where you may be present, if you see fit.

Respectfully,

ROBERTS, HUTCHINSON & THOMAS,
Att'ys for James H. Roberts et al.

Dated Chicago, June 13, 1887.

Received a copy of foregoing notice this 13*d* day of June, A. D. 1887.

WILLIAMS & THOMPSON,
Att'ys for Pet'n'r,
By R. W.

And afterwards, to wit, on the same day, there was filed with the clerk of said court a certain "petition of James H. Roberts" in words and figures as follows, to wit:

In the County Court of Cook County.

ATCHISON, TOPEKA AND SANTA FÉ RAILROAD CO. *vs.* WILLIAM C. D. GRANNIS *et al.* } Petition to Condemn.

To the honorable the judge of said court:

Your petitioners, James H. Roberts, John H. Madden, Ann Madden, and Elizabeth Nelligar, fully represent that they are
9 the owners in common and undivided of lots 1, 5, 6, 7, in block 88, in Canalport, in section 30, township 39 N., R. 14 east, of the third P. M., in Cook county, Illinois, being part and parcel of the premises sought to be condemned in the above-entitled cause, but the undersigned say that they have not been made parties defendants to the petition herein.

They therefore ask that they be made parties defendants to said petition and be allowed a reasonable time to answer the same; and they will ever pray, &c.

JAMES H. ROBERTS,
JOHN H. MADDEN,
ANN MADDEN,
ELIZABETH NELLIGAR,
By ROBERTS, HUTCHISON & THOMAS,
Their Attorneys.

And afterwards, to wit, on the 11th day of July, A. D. 1887, there was filed with the clerk of said court a certain "summons" in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon William C. D. Grannis, John J. P. Odell, Hiram C. Wheeler, International Bank, Henry A. Kohn, Julius Bauer, Josiah L. Lombard, Hiram Piersons, —— Patterson, —— Cullerton, Mat. Leonard, Union National Bank, Union Safe Deposit Company, Huntington W. Jackson, Julius Rosenthal, if they shall be found in your county, personally to be and appear before the county court of Cook county on the first day of the next term thereof,
10 to be holden at the court-house, in Chicago, in said Cook county, on the second Monday of July, 1887, to answer untó The Atchison, Topeka and Santa Fé Railroad Company in Chicago in a certain petition for condemnation of certain property in said petition described filed in said court.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness Henry Wulff, clerk of said court, and the seal thereof, at Chicago, in said county, this 7th day of June, A. D. 1887.

P'd 15.00.

HENRY WULFF, *Clerk.* [SEAL.]

Served the within writ on the within-named defendant, The International Bank, by delivering a copy thereof to B. Lowenthal, president thereof, the 9th day of June, A. D. 1887; also served this writ by delivering a copy thereof to each of the within-named defendants, Julius Rosenthal and Josiah L. Lombard, the 9th day of June, A. D. 1887.

Also served this writ by delivering a copy thereof to the within-named defendant, Henry A. Kohn, the 10th day of June, A. D. 1887.

Also served this writ by delivering a copy thereof to the within-named defendant, William C. D. Grannis, the 14th day of June, A. D. 1887.

Also served this writ by delivering a copy thereof to the within-named defendant, John J. P. Odell, the 18th day of June, A. D. 1887.

Also served this writ on the within-named defendant, The Union National Bank, by delivering a copy thereof to J. P. Odell, vice-president of same, the 18th day of June, A. D. 1887, the president not found in my county.

Also served the within writ on the within-named defendant, The Union Safe Deposit Company, by delivering a copy thereof to J. P. Odell, secretary and treasurer of same, the 18th day of June, A. D. 1887, the president not found in my county.

The other within-named defendants not found in my
11 county the 11th day of July, A. D. 1887.

CANUTE R. MATSON, *Sheriff,*
By S. E. CLEVELAND, *Deputy.*

And afterwards, to wit, on the 28th day of July, A. D. 1887, the same being one of the days of the July term of said court, the following, among other, proceedings were had by and before said court and entered of record, to wit:

ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY *vs.* W. C. GRANNIS *et al.* } Condemnation.

This day, on motion of said petitioner's attorney, leave of court is hereby granted said petitioner to make additional parties defendant in the above-entitled cause, and to amend the papers and record of said cause accordingly.

And afterwards, to wit, on the 30th day of July, A. D. 1887, there was filed with the clerk of said court a certain "affidavit — unknown owners" in words and figures as follows, to wit:

STATE OF ILLINOIS, *County of Cook,* } *ss:*

In the County Court Thereof.

ATCHISON, TOPEKA & SANTA FÉ RAILROAD COMPANY IN CHICAGO *vs.* GRANNIS *et al.* } 7211.

Sanford B. French, being duly sworn, says that he is the president of the petitioner in the above-entitled cause, and that he makes this affidavit in its behalf, and that if persons other than those named in the petition filed herein as amended by leave of court granted July 28, A. D. 1887, have or claim any interest in the
12 premises referred to in said petition the names of such persons are unknown to this affiant.

SANFORD B. FRENCH.

Subscribed and sworn to before me this 30th day of July, 1887.

CHARLES B. FOOT,
Notary Public. [SEAL.]

And afterwards, on the same day, there was filed with the clerk of said court a certain "affidavit" in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court Thereof.

ATCHISON, TOPEKA AND SANTA FÉ RAILWAY COMPANY IN CHICAGO }
vs.
GRANNIS *et al.* }

Sanford B. French on oath says that he is the president of The Atchison, Topeka and Santa Fé Railway Company in Chicago, petitioner in the above-entitled cause, and that he makes this affidavit on its own behalf, and that he is informed and believes that the following-named persons, defendants herein, are not residents of this State, but now reside in places hereinafter set after their names respectively:

Helen Gallagher, Phillipsburg, New Jersey.
Julius A. Kohn, New York city, New York.
Ebenezer B. Converse, New York city, New York.
Andrew B. Price, Ghent, Kentucky.
William A. Price, Florence, Kentucky.
Williamson E. Price, Eminence, Kentucky.
Ann Matilda Knickerbocker, Covington, Kentucky.

And this defendant further says that upon due inquiry Charles Woodward, A. C. Hamilton, Azalia G. Van Zandt, Charles C.
13 Van Zandt, Mary C. Eastman, Samuel C. Eastman, and George H. Walker, defendants herein, cannot be found so that process can be served upon them, and that upon diligent inquiry their respective places of residence cannot be ascertained; and further affiant says not.

SANFORD B. FRENCH.

Subscribed and sworn to before me this 29th day of July, A. D. 1887.

CHARLES E. TOWNE, [SEAL.]
Notary Public.

And afterwards, to wit, on the same day, there was filed with the clerk of said court a certain "amendment to petition" in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court Therefor.

ATCHISON, TOPEKA & SANTA FÉ RAILWAY COMPANY IN CHICAGO } Petition for Condemnation.
vs.
GRANNIS *et al.* }

The petition in the above-entitled cause is amended, pursuant to leave of court granted the 28th day of July, A. D. 1887, as follows:

1. Insert on page 2, after "Huntington W. Jackson," the following names: Mary E. Fuller, Melville W. Fuller, Jane Eliza Marsh, Benjamin F. Marsh, Addie R. Coolbaugh, Jr., Wm. F. Coolbaugh, Illinois Coolbaugh, Helen Gallagher, Grace W. Fuller, Maud Fuller, Mary C. Fuller, Mildred Fuller, Pauline C. Fuller, Catherine M. W. Fuller, Jane Brown Fuller, —— Fuller, The Union Safe Deposit Co., Berthold Lowenthal, Joseph A. Kohn, David A. Kohn, Julius A. Kohn, Edward Koch, Joseph Austrian, Augusta Bauer, Andrew B. Price, executor; Andrew B. Price, William A. Price, Wil-
14 liamson E. Price, Ann Matilda Knickerbocker, Ebenezer B. Converse, Charles Woodward, Henry Waller, trustee; Cyrus H. McCormick, A. C. Hamilton, William Harker, George H. Walker, Azalia G. Van Zandt, Charles C. Vanzandt, Mary C. Eastman, and Samuel C. Eastman.

WILLIAMS & THOMPSON,
Attorneys for Petitioner.

And afterwards, to wit, on the 5th day of August, A. D. 1887, there was filed with the clerk of said court a certain certificate of mailing in words and figures as follows, to wit:

STATE OF ILLINOIS, }
County of Cook, } *ss.:*

County Court of Cook County, to the September Term, A. D. 1887.

ATCHISON, TOPEKA AND SANTA FÉ RAILWAY COMPANY IN CHICAGO }
vs.
W. C. D. GRANNIS, J. J. P. ODELL, HIRAM E. WHEELER, International Bank, H. A. Kohn, Julius Bauer, J. L. Lombard, Hiram Pierson, —— Patterson, —— Cullerton, Mat. Leonard, Union National Bank, Union Safe Deposit Company, Huntington W. Jackson, Mary E. Fuller, Mellville W. Fuller, Jane Eliza Marsh, Benjamin F. Marsh, Addie R. Coolbaugh, Willimene F. Coolbaugh, Illinois Coolbaugh, Helen Gallagher, Grace W. Fuller, Maud Fuller, Mary C. Fuller, Mildred Fuller, Pauline C. Fuller, Catherine M. W. Fuller, Jane Brown Fuller, —— Fuller, The Union Safe Deposit Company, Berthold Lowenthal, Joseph A. Kohn, David A. Kohn, Julius A. Kohn, Edward Koch, Joseph Austrian, Augustus Bauer, Andrew B. Price, Executor; Andrew B. Price, William A. Price, Williamson E. Price, Ann Matilda Knickerbocker, Ebenezer B. Converse, Charles Woodward, Henry Waller, Trustee; Cyrus H. McCormick, A. C. Hamilton, William Harker, George H. Walker, Azalia G. Van Zandt, Charles C. Van Zandt, Mary C. Eastman, and Samuel C. Eastman. }

Affidavit of the non-residence of Helen Gallagher, Julius A. Kohn, Ebenezer B. Converse, Andrew B. Price, William A. Price, Williamson E. Price, and Ann Matilda Knickerbocker—

Defendant-, above named, having been filed in the office of
15 the clerk of said county court of Cook county, notice is hereby

given to the said Helen Gallagher, Julius A. Kohn, Ebenezer B. Converse, Andrew B. Price, William A. Price, Williamson E. Price, and Ann Matilda Knickerbocker that the complainant heretofore filed its bill of complaint in said court, and that a summons thereupon issued out of said court against said defendants, returnable at the court-house, in the city of Chicago, in said county, on the second Monday of September next (1887), as is by law required, which cause is now pending and undetermined in said court.

HENRY WULFF, *Clerk.* [SEAL.]

WILLIAMS & THOMPSON,
Compl't's Sol'r-.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

I, Henry Wulff, clerk of the county court of Cook county, in the State aforesaid, hereby certify that on the fifth day of August, A. D. 1887, being within ten days after the first publication of the within notice, I sent by mail a copy of said notice to the defendants named therein, as follows:

One to *to* Helen Gallagher, at Phillipsburg, New Jersey;
One to Julius A. Kohn, at New York, New York;
One to Ebenezer B. Converse, at New York, New York;
One to Andrew B. Price, at Ghent, Kentucky;
One to William A. Price, at Florence, Kentucky;
One to Williamson E. Price, at Eminence, Kentucky;
One to Ann Matilda Knickerbocker, at Covington, Kentucky,

In pursuance of section 12 of an act of the General Assembly of the State of Illinois in force July 1, 1872, entitled "An act to regulate the practice in the courts of chancery."

Witness my hand and seal of said court this fifth day of August, A. D. 1887.

HENRY HULFF, *Clerk.* [SEAL.]

16 And afterwards, to wit, on the 29th day of August, A. D. 1887, there was filed with the clerk of said court a certain "appearance" in words and figures as follows, to wit:

STATE OF ILLINOIS, }
County of Cook, } *ss:*

In the County Court Thereof.

ATCHISON, TOPEKA & SANTA FÉ RAILWAY COMPANY IN CHICAGO
vs.
THOMAS TULLY *et al.* } 7211.

We hereby waive service of process and enter the appearance of

Mark Kimball and Daniel K. Pearsons, executors of the estate of Daniel A. Jones, deceased, defendants in the above-entitled action.

SWIFT & CAMPBELL,
Sol'rs for said Def'ts.

And afterwards, to wit, on the 2d day of September, A. D. 1887, there was filed with the clerk of said court a certain "summons" in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

The People of the State of Illinois to the sheriff Hancock county, Greeting:

We command you that you summon J. J. P. Odell, Hiram E. Wheeler, International Bank, H. A. Kohn, Julius Bauer, J. L. Lombard, Hiram Pierson, —— Patterson, —— Cullerton, Mat. Leonard, Union National Bank, Union Safe Deposit Company, Huntington W. Jackson, Mary E. Fuller, Melville W. Fuller, Jane Eliza Marsh, Benjamin F. Marsh, Addie R. Coolbaugh, Jr., Wilimene F. Coolbaugh, Illinois Coolbaugh, Helen Gallagher, Grace W. Fuller, Maud Fuller, Mary C. Fuller, Mildred Fuller, Pauline C. Fuller, Catherina M. W. Fuller, Jane Brown Fuller, —— Fuller, The Union Safe Deposit Co., Berthold Lowenthal, Joseph A. Kohn, David A. Kohn, Julius A. Kohn, Edward Koch, Joseph Austrian, Augustus Bauer, Andrew B. Price, executor; Andrew B. Price, William A.
17 Price, Williamson E. Price, Ann Matilda Knickerbocker, Ebenezer B. Converse, Charles Woodward, Henry Waller, trustee; Cyrus H. McCormick, A. C. Hamilton, William Harker, George H. Walker, Azalia G. Van Zandt, Charles C. Vanzandt, Mary C. Eastman, and Samuel Eastman, if they shall be found in your county, personally to be and appear before the county court on the first day of the next term thereof, to be holden at the courthouse, in Chicago, in said Cook county, on the second Monday of September, 1887, to answer unto Atchison, Topeka and Santa Fé Railroad Company in Chicago in its certain petition for condemnation of certain property in said petition described filed in said court.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness Henry Wulff, clerk of said court, and the seal thereof, at Chicago, in said county, this 27th day of August, A. D. 1887.

[SEAL.] HENRY WULFF, *Clerk.*

STATE OF ILLINOIS, } ss:
Hancock County, }

I have served the within summons by reading the same and giving to Benjamin F. Marsh and Jane Elizabeth Marsh each one a true copy of the within this 31 day of Aug., 1887.

MARTIN V. RILEY,
Sheriff of Hancock County, Ills.,
By SHAKESPEARE HENRY, *Deputy.*

The other defendants and each of them named in within summons not found in my county Sept. 1, 1887.

M. V. RILEY, *Sheriff.*

Fees advanced, $5.60, by Williams & Thompson, att'ys.

M. V. RILEY, *Sh'ff.*

18 And afterwards, to wit, on the 10th day of September, A. D. 1887, there was filed with the clerk of said court a certain summons in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We again command you that you summon W. C. D. Grannis, J. J. P. Odell, Hiram E. Wheeler, International Bank, H. A. Kohn, Julius Bauer, J. L. Lombard, Hiram Pierson, —— Patterson, —— Cullerton, Mat. Leonard, Union National Bank, Union Safe Deposit Company, Huntington W. Jackson, Mary E. Fuller, Melville W. Fuller, Jane Eliza Marsh, Benjamin F. Marsh, Addie R. Coolbaugh, Jr., Helen Gallagher, Grace W. Fuller, Maud Fuller, Mary C. Fuller, Mildred Fuller, Paulina C. Fuller, Catherina M. W. Fuller, Jane Brown Fuller, —— Fuller, The Union Safe Deposit Co., Berthold Lowenthal, Joseph A. Kohn, David A. Kohn, Julius A. Kohn, Edward Koch, Joseph Austrian, Augustus Bauer, Andrew B. Price, executor; Andrew B. Price, William A. Price, Williamson E. Price, Ann Matilda Knickerbocker, Ebenezer B. Converse, Charles Woodward, Henry Waller, trustee; Cyrus H. McCormick, A. C. Hamilton, William Harker, George H. Walker, Azalia G. Van Zandt, Charles C. Van Zandt, Mary C. Eastman, and Samuel C. Eastman, if they shall be found in your county, personally to be and appear before the county court of Cook county on the first day of the next term thereof, to be holden at the court-house, in Chicago, in said Cook county, on the second Monday of September, 1887, to answer unto Atchison, Topeka and Santa Fé Railroad Company in Chicago in its certain petition for condemnation of certain property in said petition described filed in said court.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness Henry Wulff, clerk of said court, and the seal thereof, at Chicago, in said county, this twenty-seventh day of August, A. D. 1887.

HENRY WULFF, *Clerk.* [SEAL]

19 P'd 21.00. Served this writ on the within-named defendants, Joseph A. Kohn, Edward Koch, by delivering a copy thereof to each of them this twenty-ninth day of August, 1887; also served this writ on the within-named defendant, Mary E. Fuller, by delivering her a copy thereof this 29th day of August, 1887; also served this writ on the within-named defendants, Melville W. Fuller,

Grace W. Fuller, Maud Fuller, Mary C. Fuller, Mildred Fuller, Paulina C. Fuller, Catherina Fuller, Jane Brown Fuller, by leaving a copy thereof for each of them at their usual place of abode with Mary E. Fuller, a member of their family, a person over the age of ten years, at the same time informing her of the contents thereof, this 29th day August, 1887.

Also served this writ on the within-named defendants, Addie R. Coolbaugh, Willemena F. Coolbaugh, Illinois Coolbaugh, by leaving a copy thereof for each of them at their usual place of abode with Addie R. Coolbaugh, a member of their family, a person over the age of ten years, at the same time informing her — the contents thereof, this 29th day of August, 1887; also served this writ on the within-named defendant, Mat. Leonard, by delivering to him a copy thereof this 30th day of August, 1887; also served this writ on the within-named defendant, Berthold Lowenthal, by delivering to him a copy thereof this 1st day September, 1887; also served this writ on the within-named defendant, Augustus Bauer, by leaving a copy thereof at his usual place of abode with Ala Bauer, a member of his family, a person over the age of ten years, at the same time informing her of the contents thereof, this 1st day of September, 1887.

Also served this writ on the within-named defendant, David A. Kohn, by leaving a copy thereof at his usual place of abode with Theresa Kohn, a member of his family, a person over the age of ten years, at the same time informing her — the contents thereof, this 1st day of Sept., 1887; also served this writ on the within — defendant, Joseph Austrian, by leaving a copy thereof at his usual place of abode with Miss Austrian, a member of his family, a person over the age of ten years, at the same time informing her — the contents thereof, this 12th day of Sept., 1887.

CANUTE R. MATSON, *Sheriff*,
By CHAS. GROSS, *Deputy*.

Served this writ on the within-named defendant, Cyrus H. McCormick, by leaving a copy thereof at his usual place of abode with Caroline Sevenson, a member of his family, a person of the age of ten years and upwards, at the same time informing her of the contents thereof, the 31st day of August, 1887.

CANUTE R. MATSON, *Sheriff*,
By W. A. TOLMAN, *Deputy*.

Endorsed on face: Rec'd — o'clock — m., Aug. 27, 1887. Canute R. Matson, sheriff.

And afterwards, to wit, on the 10th day of September, A. D. 1887, there was filed with the clerk of said court a certain cross-petition in words and figures as follows, to wit:

21 In the County Court of said Cook County.

STATE OF ILLINOIS, } ss:
County of Cook, }

THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO
vs.
WILLIAM C. D. GRANNIS *et al.*

Gen. No. 7211. Proceedings for the Condemnation of Lands for Railroad Purposes.

1. And now comes Ebenezer B. Converse, made a party defendant in the above-entitled suit by the style and name of Ebenezer B. Converse, of the county of Bergen, in the State of New Jersey, and states and shows to said court—

2. That at the date of the bringing of said suit he was and still is solely seized and the owner of that tract of land situate in the city of Chicago, in the county of Cook, in the State of Illinois, described as that part of the east half ($\frac{1}{2}$) of section thirty (30), in township thirty-nine (39) north, of range fourteen (14) east, of the third (3d) principal meridian, bounded as follows, to wit: Beginning at the point where the west line of said east half ($\frac{1}{2}$) of said section thirty (30) intersects the northerly reservation or levee line of the Illinois and Michigan canal, thence running northeasterdly on said reservation or levee line ninety-three and five one-hundredths ($93\frac{5}{100}$) feet; thence running north sixty-one degrees and fifty-seven minutes (61° 57′) west one hundred seventy-five and sixty hundredths ($175\frac{60}{100}$) feet, more or less, to said west line of said east half ($\frac{1}{2}$) of said section thirty (30), and thence running south on said west line one hundred sixty-six and seventy hundredths ($166\frac{70}{100}$) feet, more or less, to the place of beginning, said tract of land being otherwise de-
22 scribed as that part of block eighty-one (81), in the subdivision known as "Canalport," taken together with one-half of the original but now abandoned street or streets thereon abutting, which lies in said east half ($\frac{1}{2}$) of said section thirty (30), but excepting, nevertheless, that part of said block eighty-one (81) occupied or subject to be occupied by said Illinois and Michigan canal; which said tract, with said exception, contains three-eight-s ($\frac{3}{8}$) of an acre, more or less, and is embraced in the description, in the petition of said railroad company filed in said cause, of the premises sought to be thereby condemned and taken for railroad purposes; which tract of said Converse so sought to be bodily condemned is worth, to wit, the sum of six thousand (6,000) dollars.

3. That he has never claimed, and he hereby expressly disclaims, any title, interest, or ownership in that part of said east half ($\frac{1}{2}$) of said soction thirty (30), described in said petition, lying outside of the said boundaries of his said tract above described.

4. That at the date of the bringing of said suit he also was and still is solely seized and the owner of that other tract of land (contiguous to said tract first above described), situate in said city of Chicago, known and described as all that part of the east half ($\frac{1}{2}$) of the southwest quarter ($\frac{1}{4}$) of said section thirty (30) bounded north-

wardly by the Chicago river and southwardly by the Illinois and Michigan canal and the south line of said section, which tract last mentioned contains forty-four (44) acres, more or less, and is not mentioned or described in said petition of said railroad company.

23 5. That said forty-four-acres tract is a compact body of land, fronting northwestwardly on said Chicago river, and abuts and fronts on its whole easterly front on the whole premises described and sought to be condemned in said petition, and fronts and abuts southwardly for its whole southward front (except for a short distance in its southwest part) directly on the northerly reservation or levee line of said Illinois and Michigan canal, to wit, for the distance of about one-fourth (¼) of a mile, which canal forms a part of a continuous navigable waterway between said city of Chicago (and Lake Michigan, with the lakes and navigable waters to the seaboard eastward of that lake) and the Mississippi river (and the navigable waters, places, States, and Territories accessible to commerce thereby); which canal and levee are, with the landing places thereon constructed or to be constructed, readily accessible from every part of said forty-four-acre tract, and all parts of which forty-four-acre tract are, in turn, readily accessible from said canal, levee, and landing places, and on or by way of which canal and reservation or levee access to and exit from every part of said tract are also at all times readily to be had to or from other contiguous lands, premises, and highways and to and from other portions of said city of Chicago by persons occupying or to occupy said tract or any part thereof and by the business and commerce for the transaction of which said premises are fitted as hereinafter stated; all of which access, easements, and privileges in respect of said canal and its said appurtenances long had been, when said suit was brought, and still are held, enjoyed, and to be enjoyed by said premises and by him, said Convers, his heirs and assigns, as by vested right under the law of the

24 land, for all time, so long as said canal and appurtenances should exist, and without interference on the part of others coveteous of the same.

6. That at the date of the bringing of said suit he, said Convers, was and still is in the possession of said forty-four-acre tract, and at large expense had thereon laid out, excavated, and constructed and was in the course of the construction of a system of docks and slips connected with the Chicago river on the north and having an aggregate linear dock frontage of over six thousand (6,000) feet, with loading and landing places for the shipment and transhipment to and from vessels of freight, goods, wares, merchandise, and commodities, and with places and yards for the keeping, sale, or storage of such freights, merchandise, and commodities, and with places and facilities for the erection of suitable offices, warehouses, factories, and business buildings on said premises, and had in that behalf at great expense filled, graded, levelled, and otherwise improved said premises, so that they might as a whole and in connection with their said frontage on and accessibility to, from, and by way of said canal and levee or reservation and to the commerce thereof be profitably em-

ployed, operated, used, rented, occupied, or further improved for carrying on thereon the business and commercial enterprises at said city of Chicago which require or use such premises and accommodations.

7. That the condemnation, taking, and use by said railroad company, for the purposes contemplated by or indicated in said petition, of the lands described in said petition, in connection with the other lands occupied or sought to be taken by it, will (besides his damages by reason of the actual taking of his said tract first above described) be of further great injury and other damage to him, said Convers, and to his last above described or forty-four-acre tract, in that it will deprive him of and permanently destroy his use thereof as a whole for the purposes for which he has improved and laid out the same as aforesaid, and in that it will cut off and destroy the said easements and access of said forty-four-acre tract, with the said docks, slips, and improvements situate thereon, and of those who shall rent, occupy, or use the same for commercial or manufacturing purposes or otherwise to and from said canal and levee and from the commerce thereof, and will cut off and deprive the whole of said tract and the persons occupying or to occupy the same and the commerce and business for which said premises are fitted and improved as aforesaid from said privileges, easements, and means of access and exit, so as aforesaid afforded to and enjoyed by them on or by way of said canal or reservation or levee, and from other means of access and exit now enjoyed by them to or from said contiguous lands, premises, and highways and to and from said other portion of said city of Chicago, and in that it will greatly interfere with and impair the convenient and profitable use of said tract and of said improvements thereon for the purposes for which they are otherwise fitted, to the great damage of him, said Convers, to wit, in the sum of fifty thousand ($50,000.00) dollars.

8. Whereupon said Convers respectfully insists that his full and just compensation for all his damages in the premises shall be ascertained and shall be awarded and paid to him pursuant to law, and that his rights in that behalf shall be fully considered and determined, and he prays a separate trial and assessment in respect of his said damages and of his compensation therefor.

EBENEZER B. CONVERS,
By CHARLES M. STURGES,
His Solicitor.

And afterwards, to wit, on the 12th day of September, A. D. 1887, there was filed with the clerk of said court a certain petition in words and figures as follows, to wit:

In the County Court of said Cook County.

Cause, Gen. No. 7211.

STATE OF ILLINOIS, } ss:
County of Cook, }

THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO *vs.* EBENEZER B. CONVERS (Otherwise Known as EBENEZER B. CONVERSE), Impleaded with WILLIAM C. D. GRANNIS and Others.	Proceeding for the Condemnation of Sundry Lots and Parcels of Land for Railroad Purposes.

Your petitioner, Ebenezer B. Convers, shows and states to said county court of Cook county—

That your petitioner is the same person named and described as a party defendant in the above-entitled suit by the style and name of "Ebenezer B. Converse."

That at the date of the bringing of said suit your petitioner was and thenceforward to the present time has continued to be and now is a citizen of the State of New Jersey, residing in the county of Bergen, in said State of New Jersey, and during all of said periods was and now is a non-resident of the State of Illinois.

27 That said The Atchison, Topeka and Santa Fé Railroad Company in Chicago at the date of the bringing of said suit was and thenceforward to the present time has continued to be and now is a citizen of the State of Illinois.

That said suit is of a civil nature at common law or in equity in which there is a controversy, wherein your petitioner is actually interested, wholly between your petitioner and said The Atchison, Topeka and Santa Fé Railroad Company in Chicago, which controversy can be fully determined as between them in the circuit court of the United States for the northern district of Illinois, sitting in the northern division of said district, the matter in dispute in which controversy exceeds, exclusive of interest and costs, the sum or value of two thousand dollars.

That your petitioner desires to remove such suit and controversy from said county court of Cook county to said circuit court of the United States, pursuant to the act or acts of Congress in that case made and provided, and to that end (at the time or before the time when the defendant is required by the laws of the State of Illinois or the rules of said county court to answer or plead to the declaration or complaint of the plaintiff) makes and files this his petition and makes and files with the same his bond, with good and sufficient surety, for his entering in such circuit court on the first day of its next session a copy of the record in such suit and for paying all costs that may be awarded by said circuit court, if it shall hold that such suit was wrongfully or improperly removed thereto, and also for there appearing and entering special bail in such suit, if special bail was originally requisite therein.

Wherefore your petitioner respectfully prays said county court of Cook county to accept said petition and bond and to order the removal of said suit and controversy into said circuit court of the United States, pursuant to the law of the land and said act or acts of Congress, and thereupon to proceed no further in such suit against your petitioner; and your petitioner will ever pray, &c.

EBENEZER B. CONVERS.
CHAS. M. STURGES,
Sol'r and of Counsel for s'd Petitioner.

And afterwards, to wit, on the same day, there was filed with the clerk of said court a certain "bond" in words and figures as follows, to wit:

Know all men by these presents that we, Ebenezer B. Convers, of the county of Bergen, in the State of New Jersey, as principal obligor, and Frank Sturges, of the county of Cook, in the State of Illinois, as surety, are held and firmly bound unto the Atchison, Topeka and Santa Fé Railroad Company in Chicago, its successors and assigns, and unto all other persons whom it may concern in the penal sum of five hundred dollars; to the payment whereof, well and truly to be made, we bind ourselves and our heirs, executors, administrators, and assigns, jointly and severally, by these presents.

Witness our hands and seals this twelfth day of September, A. D. 1887.

The condition of the above obligation is such that whereas the said Convers has applied to the county court of Cook county, in the State of Illinois (and to that end herewith files his petition to
29 said county court), to remove to the circuit court of the United States for the northern district of Illinois, sitting in the northern division of said district, a certain suit and controversy pending between said The Atchison, Topeka & Santa Fé Railroad Company in Chicago and said Convers in a cause now brought and undetermined in said county court for the condemnation of sundry lots and parcels of land for railroad purposes, in which cause said The Atchison, Topeka and Santa Fé Railroad Company in Chicago is plaintiff (or petitioner) and said Convers, impleaded with William C. D. Grannis and many others, is defendant, which cause is numbered with the general number 7211 in said county court:

Now, if the said Convers shall enter in said circuit court of the United States on the first day of its next session a copy of the record in such suit and shall pay all costs that may be awarded by said circuit court if it shall hold that such suit was wrongfully or improperly removed thereto, and shall also there appear and enter special bail in said suit, if special bail was originally requisite therein, then this obligation to be void; otherwise to remain in full force and virtue.

EBENEZER B. CONVERS. [SEAL.]
FRANK STURGES. [SEAL.]

STATE OF ILLINOIS, } ss:
County — Cook, }

Frank Sturges, of lawful age, having — first duly sworn, deposes and says that he is the surety named in and who executed the within and foregoing bond; that he resides in the county of Cook, in the State of Illinois; that he is the sole owner of unincumbered real estate situate in said Cook county, exclusive of property
30 by law exempt from execution, of the clear value of upwards of two thousand dollars, and that he is worth, over and above all his debts and liabilities, upwards of two thousand dollars; and further he saith not.

FRANK STURGES.

Subscribed and sworn to before me by Frank Sturges on this twelfth day of September, A. D. 1887.

WM. H. FINNEY,
[SEAL.] *A Notary Public within and for Cook County, in the State of Illinois.*

And afterwards, to wit, on the 13th day of September, there was filed with the clerk of said court a certain appearance of Andrew B. Price *et al.* in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court of Cook County. September Term, A. D. 1887.

ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO
vs.
W. C. D. GRANNIS *et al.*

And now come Andrew B. Price, executor of the estate of Albert Price, deceased, and in his own right; Williamson E. Price, William A. Price, and Ann Matilda Knickerbocker, defendants in the above-entitled cause, by Robert A. H. Patten and Granville W. Browning, their attorneys, and enter their appearance herein and show unto the court here that they are interested in and have a just and valid lien on the premises in the said petition mentioned and de-
31 scribed as that part of the east half of section thirty, township thirty-nine north, range fourteen east, of the third principal meridian, lying between the west fork of the south branch of the Chicago river and the Illinois and Michigan canal, in said county of Cook and State of Illinois, under and by virtue of a certain trust deed executed, acknowledged, and delivered by Samuel J. Walker and Amanda M. Walker, his wife, and Henry H. Walker, dated February 19th, A. D. 1870, and recorded in the recorder's office of Cook county aforesaid on the seventeenth day of April, A. D. 1871, in Book 641, page 82, whereby the said Samuel J. Walker and Amanda M. Walker conveyed unto Samuel M. Moore, trustee (Bernard G. Caulfield being named as successor in trust), the east half

and the southwest quarter of section thirty, township thirty-nine north, range fourteen east, of the third principal meridian, and the east half of the northeast quarter of the southeast quarter of section twenty-five, township thirty-nine north, range fourteen east, of the third principal meridian, in said county, in trust to secure the payment of a certain promissory note executed and delivered by Samuel J. Walker and Henry H. Walker, payable to the order of Albert Price on or before three years after the date thereof, and dated February 19, A. D. 1870, for the sum of forty thousand dollars, with interest at eight per cent. per annum and ten per cent. after due.

That there was paid on said note on or about May 20, 1871, the sum of eighteen thousand dollars, and a proportionate part of the premises in said trust deed mentioned and other than that described in the petition herein was released from the lien of said trust deed; that there is now due on said note the sum of twenty-
32 two thousand dollars, with interest from February 19, 1873, at the rate of ten per cent. per annum, and that no part of the premises mentioned in the petition herein has ever been released from the lien of said trust deed, and that said premises mentioned in said petition are still subject to the lien of said trust deed and the said sum so remaining due on said note.

That, the records of Cook county and said original trust deed having been destroyed by fire, the said Samuel J. Walker and Amanda M. Walker, his wife, on or about the twelfth day of June, A. D. 1874, executed a trust deed to the same parties to supply the loss of said former deed of trust, dated the day and year of said former trust deed, conveying the same property and containing the same terms and conditions, which was recorded in the recorder's office of Cook county aforesaid on the twelfth day of June, A. D. 1874; all of which will more fully appear by a reference to the said note and trust deeds when they shall be produced on the trial hereof and to which these defendants pray leave to refer.

That in November, 1874, said Albert Price departed this life, and by his last will and testament, duly admitted to probate in Boone county, Kentucky, he appointed Andrew B. Price his executor, who duly qualified as such; that all of the debts of said estate have been paid, and that, as heirs-at-law and devisees of said Albert Price, deceased, these defendants are the owners and legal holders of said note and entitled to all the moneys due thereon and unpaid and to become due.

ANDREW B. PRICE,
Executor of the Estate of Albert A. Price, Deceased, and in His Own Right,
WILLIAMSON E. PRICE,
WILLIAM A. PRICE, AND
ANN MATILDA KNICKERBOCKER,
By ROBERT H. PATTEN &
GRANVILLE W. BROWNING,
Their Attorneys.

ROBERT H. PATTEN,
GRANVILLE W. BROWNING,
Def'ts' Attorneys.

33 And afterwards, to wit, on the same day, there was filed with the clerk of said court a certain "appearance" in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court of Cook County. September Term, A. D. 1887.

ATCHISON, TOPEKA & SANTA FÉ RAILROAD COMPANY IN CHICAGO *vs.* W. C. D. GRANNIS *et al.* and INTERNATIONAL Bank, H. A. Kohn, Berthold Lowenthal, Joseph A. Kohn, David A. Kohn, Julius A. Kohn, Edward Koch, Joseph Austrian, Augustus Bauer, and D. G. Hamilton. } No. 7211. Condemnation Proceedings.

And now come The International Bank, H. A. Kohn, Berthold Lowenthal, Joseph A. Kohn, David A. Kohn, Julius A. Kohn, Edward Koch, Joseph Austrian, Augustus Bauer, and D. G. Hamilton, ten of the defendants in the above-entitled cause, by Richard S. Thompson, their attorney, and enter their appearance herein.

RICHARD S. THOMPSON,
Attorney for said Defendants.

And afterwards, to wit, on the 19th day of September, A. D. 1887, there was filed with the clerk of said court a certain petition in words and figures as follows, to wit:

34 STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court of Cook County. Sept. Term, A. D. 1887.

ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY *vs.* WILLIAM C. D. GRANNIS *et al.* } Petition to Condemn.

To the honorable the judge of said court:

Your petitioners, Mary A. Joyce, William H. Joyce, Julia A. Joyce, Margaret A. Cooney, and Thomas Joyce (minor), by next friend, heirs-at-law of William Joyce, deceased, respectfully represent unto your honor that they are the owners and in possession of certain parcels of land in the east one-half (½) of south fractional section thirty (30), township thirty-nine (39), range fourteen (14), lying between the west fork of the south branch of the Chicago river and the Illinois and Michigan canal, Cook county, Illinois, which are part and parcel of the premises sought to be condemned in the above-entitled cause; but the undersigned petitioners say that they have *have* not been made party defendants to the petition herein filed, and

they therefore ask that they be made party defendants to said petition and be allowed a reasonable time wherein to answer the same; and petitioners will ever pray, &c.

MARY A. JOYCE,
WM. H. JOYCE,
JULIA A. JOYCE,
MARGARET A. COONEY,
THOMAS JOYCE (MINOR),
By GEORGE C. BUELL,
Their Attorney.

35 STATE OF ILLINOIS, } ss:
Cook County, }

In the County Court of Cook County.

A., T., SA. FÉ R'D CO. }
vs. } Pt. to Condemn.
W. C. D. GRANNIS *et al.* }

To Messrs. Williams & Thompson, attorneys for said railroad company:

You are here notified that on Monday, the 19th day of September, A. D. 1887, at 10 a. m., or as soon thereafter as counsel can be heard, I shall, before his honor Judge Prendergast, in the room usually occupied by him as a court-room, in said county, ask leave to make certain parties def'ts and time to answer, as per copy of petition hereto attached, at which time and place you can appear if you see fit.

Yours, &c. GEORGE C. BUELL,
Att'y for Petitioners Named.

Dated September 17th, 1887.

STATE OF ILLINOIS, } ss:
—— *County,* }

—— ——, being first duly sworn, deposes and says that he served the above notice by leaving a copy of the same with —— —— the — day of ——, 18—.

—— ——.

Subscribed and sworn to before me this — day of ——, A. D. 18—.
—— ——, *Clerk.*

Endorsed on face: Service of a copy of the within notice is accepted this 17th day of Sept., 1887. Williams & Thompson, att'y-for A., T. & S. F. R. R. Com., Chic.

36 And afterwards, to wit, on the 19th day of September, A. D. 1887, the same being one of the days of the September term of said court, the following, among other, proceedings were had by and before said court and entered of record, to wit:

ATCHISON, TOPEKA & SANTA FÉ RAILROAD COMPANY
vs.
EBENEZER CONVERSE, Impleaded with W. C. D. GRANNIS *et al.*
} Condemnation.

This day comes Mary A. Joyce *et al.*, by their attorney, and submit herein their motion that said Mary A. Joyce, Wm. H. Joyce, Julia A. Joyce, Margaret A. Cooney, and Thomas Joyce, heirs-at-law of William Joyce, deceased, be made parties defendant in the above-entitled cause, and the court, being fully advised in the premises, doth order and adjudge that said above-named parties be, and they are hereby, made parties defendant in said above-entitled cause.

And it is further ordered by the court that said Wm. H. Joyce be, and is hereby, appointed guardian *ad litem* for said Thomas Joyce, minor, defendant.

And afterwards, to wit, on the same day, the same being one of the days of the September, A. D. 1887, — of said court, the following, among other, proceedings were had by and before said court and entered of record, to wit:

STATE OF ILLINOIS, } *ss:*
County of Cook, }

In the County Court of said Cook County, of the September Term, A. D. 1887.

37 THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO
vs.
EBENEZER B. CONVERS, Impleaded with WILLIAM C. D. GRANNIS *et al.*
} Gen. No. 7211. Proceedings for the Condemnation of Land for Railroad Purposes.

On motion of the said Ebenezer E. Convers, by Chas. M. Sturges, his solicitor, the court accepts the petition and bond of the said Convers, filed on the first day of this term, for the removal of the suit and controversy in the above-entitled cause between said railroad company and said Convers to the circuit court of the United States for the northern district of Illinois, sitting in the northern division of said district, and orders said removal to be made pursuant to the prayer of said petition.

STATE OF ILLINOIS, } *ss:*
County of Cook, }

I, Henry Wulff, clerk of the county court of Cook county, in the State aforesaid, do hereby certify that the above and foregoing is a true, correct, and complete transcript of the record in a certain cause pending in said court, wherein The Atchison, Topeka and Santa Fé Railroad Company in Chicago was plaintiff and W. C. D. Grannis *et al.*, defendants, all of which appears from the records and files at my office.

In witness whereof I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this twenty-eighth day of September, A. D. 1887.

HENRY WULFF,
Clerk of the County Court. [SEAL.]

Endorsed: Filed Oct. 3, 1887. Wm. H. Bradley, clerk.

38 Afterwards, to wit, on the twentieth day of February, 1887, came Ebenezer B. Convers, by his attorney, and filed in said clerk's office his appearance in said-entitled cause; which said appearance is in the words and figures following, to wit:

39 In the Circuit Court of the United States for the District and Division Aforesaid.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division.

THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO
vs.
EBENEZER B. CONVERS, Impleaded with WILLIAM C. D. GRANNIS *et al.*

Gen. No. 20704. Condemnation Proceedings.

I hereby enter my appearance in the above-entitled cause as counsel and attorney for the defendant Ebenezer B. Convers.

R. S. THOMPSON.

Endorsed: Filed Feb. 20, 1888. Wm. H. Bradley, clerk.

40 Afterwards, to wit, on the twenty-eighth day of February, 1888, in the December term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Romanzo Bunn, district judge, is the following entry, to wit:

Order.

THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO
vs.
E. B. CONVERS *et al.*

Petition to Condemn.

Now come the parties, by their attorneys, and on motion of Charles M. Sturges, Esq., leave is given the defendant E. B. Converse to file an amended cross-petition herein.

On the same day, to wit, on the twenty-eighth day of February, 1888, came Ebenezer B. Convers, by his attorneys, and filed in said clerk's office his amendment to his cross-petition in said entitled cause; which said amendment is in the words and figures following, to wit:

41 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, Northern Division, }

In the Circuit Court of the United States for the Northern District of Illinois, Sitting in the Northern Division of said District, of the December Term, A. D. 1887.

THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO
v.
EBENEZER B. CONVERS, Impleaded with WILLIAM C. D. GRANNIS *et al.*
} Gen. No. 20704.

Proceeding for the condemnation of land for railroad purposes.

And now comes the said Convers, by Chas. M. Sturges and R. S. Thompson, his solicitors, and, by leave of court first had, amends his original cross-petition in said cause in the manner following, to wit:

He strikes out from said cross-petition the paragraph thereof numbered 2, and in place thereof substitutes the following paragraph, viz:

2. That at the date of the bringing of said suit he was and still is solely seized and the owner of that tract of land situate in the city of Chicago, in the county of Cook, in the State of Illinois, described as that part of the east half ($\frac{1}{2}$) of section thirty (30), in township thirty-nine (39) north, of range fourteen (14) east, of the third (3d) principal meridian, bounded as follows, to wit: Beginning at
42 a point in the west line of said east half ($\frac{1}{2}$) of said section thirty (30), which point is, by measurement on said west line, distant one hundred sixty-six and seven-tenths ($166\frac{7}{10}$) feet north from the northerly reservation or levee line of the Illinois and Michigan canal, from said point running south on said west line to said northerly reservation or levee line; thence running northeastwardly on said northerly reservation or levee line eighty-two and ninety-four one-hundredths ($82\frac{94}{100}$) feet, and thence running in a straight line one hundred fifty-six and fifty-seven one-hundredths ($156\frac{57}{100}$) feet, more or less, northwestwardly to the point of beginning, said tract of land being otherwise described as that part of block eighty-one (81), in the subdivision of land known as "Canalport" (taken together with one-half of the original but now abandoned street or streets on that part abutting), which lies in said east half ($\frac{1}{2}$) of said section thirty (30), excepting, nevertheless, that part of said block eighty-one (81) occupied or subject to be occupied by said Illinois and Michigan canal, which said tract, with said exception, contains six thousand four hundred and four (6,404) square feet, more or less, and is embraced in the description, in the petition of said railroad company filed in said cause, of the premises sought thereby to be condemned and taken for railroad purposes; which

tract of said Convers so sought to be condemned and taken is worth, to wit, the sum of three thousand dollars.

R. S. THOMPSON,
CHARLES M. STURGES,
Solicitors for Ebenezer B. Convers.

Endorsed: Filed Feb'y 28, 1888. Wm. H. Bradley, clerk.

43 Be it remembered that on the third day of October, 1887, there was filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, a bond for costs and a transcript of record from the county court of Cook county, Illinois, in the next below entitled cause; which said bond and transcript are in the words and figures following, to wit:

Bond for Costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss:

Circuit Court. October Term, A. D. 1887.

THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO
vs.
EBENEZER B. CONVERS, Impleaded with THOMAS TULLY *et al.*

20705. Proceedings to Condemn Real Estate.

I enter myself security for said Convers for costs in this cause, and promise to pay all costs which against him may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by said Convers of any costs ordered or adjudged to be paid by him I hereby agree and stipulate
44 that execution may issue against my property for any costs taxed against him.

Dated this third day of October, A. D. 1887.

FRANK STURGES.

Endorsed: Filed Oct. 3, A. D. 1887. Wm. H. Bradley, clerk.

45 UNITED STATES OF AMERICA,
State of Illinois, County of Cook, } ss:

Pleas before the Honorable Richard Prendergast, sole presiding judge of the county court of Cook county, in the State of Illinois, at a regular term of said county court of Cook county, begun and holden at the court-house, in the city of Chicago, in said county and State, on the second Monday, being the twelfth day, of September, in the year of our Lord one thousand eight hundred and eighty-seven and of the Independence of the United States of America the one hundred and twelfth.

Present: The Honorable Richard Prendergast, judge of the county court of Cook county.

CANUTE R. MATSON,
Sheriff of Cook County.

Attest: HENRY WULFF, *Clerk.*

Be it remembered that heretofore, to wit, on the 10th day of June, in the year of our Lord one thousand eight hundred and eighty-seven, the same being one of the days of the May term of the county court of Cook county, the following petition was filed with the clerk of said court in words and figures as follows, to wit:

STATE OF ILLINOIS, }
County of Cook, } *ss:*

In the County Court Thereof.

ATCHISON, TOPEKA & SANTA FÉ RAILROAD COMPANY IN CHICAGO
vs.
THOMAS TULLY *et al.* } 20705.

To the Honorable Richard Prendergast, judge of said court:

Your petitioner, The Atchison, Topeka and Santa Fé Railroad Company in Chicago, respectfully represents that it is a cor-
46 poration duly organized, existing, and doing business under the general laws of the State of Illinois, and that it has power, among other things, to construct, operate, and maintain a line of railroad from a point on the west line of Cook county, Illinois, near where the Desplaines river crosses the line of said county, thence by the most favorable route in an easterly or northeasterly direction to a point on the shore of Lake Michigan near the eastern extremity of Sixteenth street, in the city of Chicago, Illinois, and over and upon the lands and property hereinafter described.

Your petitioner further shows that it has located its line of road, side tracks, freight yards, shops, and appurtenances for the construction and operation of its said line of road over and upon the lands and property hereinafter described in said Cook county, and that the persons whose names follow the descriptions of the several tracts of land are the owners thereof respectively, as appears by the records of said county, or have or claim some interest in the said lands or property, described as follows, to wit:

Lots 1 to 8, inclusive, and 24 to 29, inclusive, in block 7, in Manchester, being a subdivision of a part (north of Illinois and Michigan canal) of the east half of the northeast quarter of section 36, township 39 north, range 13 east, of the third principal meridian; H. A. Kohn and Brothers, Asahel Gage, D. G. Hamilton.

Lots 9 to 23, inclusive, in block 7, in said "Manchester;" Union Stock Yards and Transit Company.

All of block 8, in said "Manchester;" Wisconsin National Bank, John H. McMiller, Lizzie B. Ward. Lots 13 to 18, inclusive, in block

1, in said "Manchester;" Wisconsin National Bank, Frederick Miller, John H. McMiller, Lizzie B. Ward.

47 Beginning at a point in the center line of Western avenue, said point being 315 feet northwesterly from and measured at right angles to the northerly reservation line of the Illinois and Michigan canal, thence south along said center line of Western avenue to the said reservation line, thence northeasterly along said reservation line to the east line of Leavitt street, thence north along said east line of Leavitt street to a point 285 feet northeasterly of and measured at right angles to the said reservation line, thence southwesterly to the place of beginning; Henry Korits and J. C. Tatge and the Northern Bank of Kentucky.

And also a strip of land 100 feet wide northwesterly from and adjoining the northerly line of the reservation of the Illinois and Michigan canal, across the east half of the northwest quarter of section 31 and the east half of the southwest quarter of section 30, said sections being in township 39 north, range 14 east, of the third principal meridian; E. B. Convers, Clarence Buckingham, Ebenezer Buckingham.

And also a strip of land 100 feet wide, 50 feet in width on either side of the following-described center line, to wit: Beginning at a point on the west line of the southeast quarter of section 35, township 39 north, range 13 east, of the third principal meridian, said point being 260 feet northwesterly from and measured at right angles to the northerly line of the reservation of the Illinois and Michigan canal, said center line running thence northeasterly parallel with and 260 feet northwesterly from the said reservation line over and across the following-described tracts of land, to wit:

48 The southeast quarter of section 35; Thomas Tully and Mark Kemball and D. K. Pearson, executors and trustees of the last will and testament of Daniel A. Jones, deceased.

The east half of the southeast quarter of the northeast quarter of section 35; Luke Coyne and Michael Coyne, trustees.

The southwest quarter of the northwest quarter of section 36, township 39 north, range 13 east, of the third principal meridian; Edward W. Libby.

The southeast quarter of the northwest quarter of said section 36; Thomas Rutter.

That part of the west half of the southwest quarter of the northeast quarter of said section 36 lying north of the Illinois and Michigan canal; Joseph Austrian and J. M. Fuller.

The northwest quarter of the northeast quarter of said section 36; George Wilshire.

Block 5 of "Manchester" aforesaid; A. H. Lichty.

Block 6 of "Manchester" aforesaid; National Bank of Illinois and W. A. Hammond.

And that there are other persons unknown to your petitioner who have or claim to have some interest in said lands and property who are hereby made parties to this petition under the designation of "unknown owners," and that said lands and property are necessary to your petitioner for its right of way, side tracks, depots and depot

grounds, freight yards, shops, and appurtenances for the construction and operation of its said line of railroad.

That your petitioner is unable to agree with the owners of and persons interested in said lands and property as to the compensation which should be paid for the use thereof by your petitioner.

Your petitioner therefore prays that the compensation to
49 be paid to the several owners of and persons interested in said lands and property on account of the appropriation thereof by your petitioner for its railroad purposes aforesaid may be ascertained, and that such further proceedings may be had as are provided by law.

ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO,
By SANFORD B. FRENCH, *Its President.*

And afterwards, to wit, on the same day, there was filed with the clerk of said court the affidavit of S. B. French in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court Thereof.

ATCHISON, TOPEKA & SANTA FÉ RAILROAD COMPANY IN CHICAGO }
v. }
THOMAS TULLY *et al.* }

Sanford B. French, being duly sworn, says that he is president of the petitioner in the above-entitled cause and makes this affidavit in its behalf; that he is informed and believes that certain persons other than those named in the petition filed herein have or claim some interest in the premises referred to in said petition, but that the names of such persons are at present unknown to this affiant.

SANFORD B. FRENCH.

Subscribed and sworn to before me this 10th day of June, A. D. 1887.

E. C. PHELPS, [SEAL.]
Notary Public.

50 And afterwards, to wit, on the eighth day of July, A. D. 1887, there was filed with the clerk of said court a certain summons in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

The people of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon H. A. Kohn & Brothers, Asahel Gage, D. G. Hamilton, Union Stock Yards & Transit Co., John H. McMillan, Lizzie B. Ward, Wisconsin National Bank, Fred-

erick Miller, Henry Koritz, and J. C. Tatge, Northern Bank of Kentucky, E. B. Convers, Clarence Buckingham, Ebenezer Buckingham, Thomas Tully, Mark Kimball, D. K. Pearsons, Luke Coyne, Michael Coyne, Edward W. Libby, Thomas Rutter, Joseph Austrian, J. M. Fuller, George Wilshire, A. H. Lighty, National Bank of Illinois, W. A. Hammond, and unknown owners, if they shall be found in your county, personally to be and appear before the county court of Cook county, on the first day of the next term thereof, to be holden at the court-house in Chicago, in said Cook county, on the second Monday of July, 1887, to answer unto the Atchison, Topeka and Santa Fé Railroad Company in Chicago in a certain petition for condemnation of certain property in said petition described, filed in said court.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness Henry Wulff, clerk of said court, and the seal thereof, at Chicago, in said county, this 10th day of June, A. D. 1887.

HENRY WULFF, *Clerk.* [SEAL.]

51 Endorsed on back of summons: Served this writ on the within-named defendants, W. A. Hammond and Ebenezer Buckingham, by delivering a copy thereof to each of them the 11th day of June, 1887. Also served this writ on the within-named defendant, National Bank of Illinois, by delivering a copy thereof to W. A. Hammond, cashier of said bank, the 11th day of June, 1887; the president of said bank not found in my county. Also served this writ on the within-named defendant, Joseph Austrian, by delivering a copy thereof to him the 13th day of June, 1887. Also served this writ on the within-named defendant, Clarence Buckingham, by delivering thereof a copy to him this 14 day of June, 1887. Canute R. Matson, sheriff; W. A. Johnson, deputy.

Endorsed on face of summons: Rec'd — o'clock — m. June 10th, '87. Canute R. Matson.

And afterwards, to wit, on the 9th day of July, A. D. 1887, there was filed with the clerk of said court a certain appearance in words and figures as follows, to wit:

STATE OF ILLINOIS, } *ss:*
Cook County, }

In the County Court of Cook County.

ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO }
vs.
THOMAS TULLY *et al.* }

And now come the National Bank of Illinois and Wm. A. Hammond, owners of block number six (6) in Manchester, being a subdivision of a part (north of Illinois and Michigan canal) of
52 the east half of the northwest quarter of section 36, township 39 north, range 13 east, of the third principal meridian, in

the county of Cook and State of Illinois, by Grant, Brady & Northup, their attorneys, and enter their appearance in said cause.

GRANT, BRADY & NORTHRUP,
Attorneys for the Nat'l B'k of Ills. and Wm. A. Hammond.

And afterwards, to wit, on the 11th day of July, A. D. 1887, there was filed with the clerk of said court the appearance of certain defendants, in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

Petition to condemn, &c.

In the County Court of said Cook County.

THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO
vs.
THOMAS TULLY *et al.*
} Gen. No. 7215.

And now come Ebenezer Buckingham and Clarence Buckingham, two of the defendants in the above-entitled cause, and enter their appearance in said cause by Charles M. Sturges, thir solicitor.

And afterwards, to wit, on the 28th day of July, A. D. 1887, the same being one of the days of the July term of said court, the following, among other, proceedings were had by and before said court and entered of record, to wit:

53 ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO
vs.
H. A. KOHN *et al.*
} Condemnation.

This day, on motion of said petitioner's attorney, leave is hereby granted said petitioner to make additional parties defendant in the above-entitled cause and to amend the papers and record of said cause accordingly.

And afterwards, to wit, on the 30th day of July, A. D. 1887, there was filed with the clerk of said court a certain amended petition in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court Therefor.

ATCHISON, TOPEKA AND SANTA FÉ RAILWAY COMPANY IN CHICAGO
v.
THOMAS TULLY *et al.*
} 7215.

The petition in the above-entitled cause is amended, pursuant to leave of court granted the 28th day of July, A. D. 1887, as follows:

1. On page 2, after "D. G. Hamilton," insert "Joseph A. Kohn."

WILLIAMS & THOMPSON,
Attorneys for Petitioner.

And afterwards, to wit, on the same day, there was filed with the clerk of said court a certain affidavit in words and figures as follows, to wit:

54 STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court Therefor.

ATCHISON, TOPEKA & SANTA FÉ RAILWAY COMPANY IN CHICAGO }
vs.
THOMAS TULLY *et al.* }

Sanford B. French on oath states that he is the president of the Atchison, Topeka and Santa Fé Railway Company in Chicago, petitioner in the above-entitled cause, and that he makes this affidavit on its behalf, and says that he is informed and believes the following-named persons, defendants herein, are not residents of this State, but now reside in the places hereinafter set opposite their names respectively:

Wisconsin National Bank, Watertown, Wisconsin.
Northern Bank of Kentucky, Covington, Kentucky.
George Wilshire, Cincinnati, Ohio.
Asahel Gage, Vineland, New Jersey.
J. M. Fuller, Bradford, Pennsylvania.
A. H. Lichty, Sterling, Illinois.
E. B. Converse, New York city, New York.

And this affiant further saith that upon due inquiry Lizzie B. Ward and Frederick Miller, defendants herein, cannot be found so that process can be served upon them, and that upon diligent inquiry their respective places of residence cannot be ascertained; and further affiant saith not.

SANFORD B. FRENCH.

Subscribed and sworn to before me this 29th day of July, A. D. 1887.

CHARLES E. TOWNE,
Notary Public. [SEAL.]

55 And afterwards, to wit, on the same day, there was filed with the clerk of said court a certain affidavit as to "unknown owners" in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court Thereof.

ATCHISON, TOPEKA AND SANTA FÉ RAILWAY COMPANY IN CHICAGO
vs.
THOMAS TULLY *et al.* } 7215.

Sanford B. French, being duly sworn, says that he is the president of the petitioner in the above-entitled cause, and that he makes this affidavit in its behalf, and that if persons other than those named in the petition filed herein as amended by leave of court granted July 20th, A. D. 1887, have or claim any interest in the premises referred to in said petition the names of such persons are unknown to this affiant.

SANFORD B. FRENCH.

Subscribed and sworn to before me this 30th day of July, A. D. 1887.

B. F. LEWIS,
Notary Public. [SEAL.]

And afterwards, to wit, on the 5th day of August, A. D. 1887, there was filed with the clerk of said court a certificate of mailing notice in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

County Court of Cook County, to the September Term, A. D. 1887.

56 ATCHISON, TOPEKA AND SANTA FÉ RAILWAY COMPANY IN CHICAGO
vs.
THOMAS TULLY, H. A. KOHN, JOSEPH A. KOHN, ASAHEL GAGE, D. G. HAMILTON, Union Stock Yards and Transit Company, Wisconsin National Bank, John A. McMillan, Lizzie B. Ward, Frederick Miller, Henry Koritz, J. C. Tatge, Northern Bank of Kentucky, E. B. Converse, Clarence Buckingham, Ebenezer Buckingham, Mark Kimball, and D. K. Pearsons, Executors and Trustees of the Last Will and Testament of Samuel A. Jones, Deceased; Luke Coyne and Michael Coyne, Trustees; Edward W. Libby, Thomas Rutter, Joseph Austrian, J. M. Fuller, George Wilshire, A. H. Lichty, National Bank of Illinois, W. A. Hammond, and Unknown Owners. } 7215.

Affidavit of the non-residence of Wisconsin National Bank, Northern Bank of Kentucky, George Wilshire, Asahel Gage, J. M. Fuller, A. H. Lichty, and E. B. Converse, defendants above named, having been filed in the office of the clerk of said county court of Cook county, notice is hereby given to the said Wisconsin National

Bank, Northern Bank of Kentucky, Geo. Wilshire, Asahel Gage, J. M. Fuller, A. H. Lichty, and E. B. Convers that the complainant heretofore filed its bill of complaint in said court, and that a summons thereupon issued out of said court against said defendants, returnable at the court-house, in the city of Chicago, in said county, on the second Monday of September next (1887), as is by law required, which cause is now pending and undetermined in said court.

HENRY WULFF, *Clerk.* [SEAL.]
WILLIAMS & THOMPSON,
Compl't's Sol'rs.

STATE OF ILLINOIS, } ss:
Cook County, }

I, Henry Wulff, clerk of the county court of Cook county, in the State aforesaid, hereby certify that on the fifth day of August, A. D. 1887, being within ten days after the first publication of the within notice, I sent by mail a copy of said notice to the defendants named therein, as follows:

57 One to Wisconsin National Bank, at Watertown, Wisconsin;
One to Northern Bank of Kentucky, at Covington, Kentucky;
One to George Wilshire, at Cincinnati, Ohio;
One to Asahel Gage, at Vineland, New Jersey;
One to J. M. Fuller, at Bradford, Pennsylvania;
One to A. H. Lichty, at Sterling, Illinois;
One to E. B. Converse, at New York, New York,

in pursuance of section 12 of an act of the General Assembly of the State of Illinois in force July 1, 1872, entitled "An act to regulate the practice in the courts of chancery."

Witness my hand and the seal of said court this fifth day of August, A. D. 1887.

HENRY WULFF, *Clerk.* [SEAL.]

And afterwards, to wit, on the 10th day of September, A. D. 1887, there was filed with the clerk of said court a certain "summons" in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We again command you that you summon Thomas Tully, H. A. Kohn, Joseph A. Kohn, Asahel Gage, D. G. Hamilton, Union Stock Yards and Transit Company, Wisconsin National Bank, John H. McMillan, Lizzie B. Ward, Frederick Miller, Henry Koritz, J. C. Tatge, Northern Bank of Kentucky, E. B. Converse, Clarence Buckingham, Ebenezer Buckingham, Mark Kimball, and D. K. Pearsons, executors and trustees of the last will and testament of Daniel A. Jones, deceased; Luke Coyne and Michael Coyne, trustees; Edward

W. Libby, Thomas Rutter, Joseph Austrian, J. M. Fuller, George Wilshire, A. H. Lichty, National Bank of Illinois, W. A. Hammond, and unknown owners, if they shall be found in your county, personally to be and appear before the county court of Cook county on the first day of the next term thereof, to be holden at the court-house, in Chicago, in said Cook county, on the second Monday of September,
1887, to answer unto Atchison, Topeka & Santa Fé Railroad
58 Company in Chicago in its certain petition for condemnation of certain property in said petition described, filed in said court.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness Henry Wulff, clerk of said court, and the seal thereof, at Chicago, in said county, this twenty-seven- day of August, A. D. 1887.

HENRY WULFF, *Clerk.* [SEAL.]

Served this writ on the within-named defendants, Henry A. Kohn, Joseph A. Kohn, Thomas Tully, Mark Kimball, by delivering a copy thereof to each of them this 29th day of August, 1887; also served this writ on the within-named defendant, Henry Koritz, by leaving a copy thereof at his usual place of abode with Lena Koritz, a member of his family, a person over the age of ten years, at the same time informing her of the contents thereof, this 29th August, 1887; also served this writ on the within-named defendant, J. C. Tatge, by leaving a copy thereof at his usual place of abode with Minnie Siegle, a member of his family, a person over the age of ten years, at the same time informing her — the contents thereof, this 29th day of August, 1887; also served this writ on the within-named defendant, John H. MacMillan, by leaving a copy thereof at his usual place of abode with Mrs. J. H. MacMillan, a member of his family, a person over the age of ten years, at the same time informing her — the contents thereof, this 29 day of August, 1887; also served this writ on the within-named defendant, Luke Coyne, by leaving a copy thereof at his usual place of abode with Mrs. Kate Coyne, a member of his family, a person over the age of ten years, at the same time in-
59 forming her — the contents thereof, this 30th day of August, 1887; also served this writ on the within-named defendant, Michael Coyne, by leaving a copy thereof at his usual place of abode with Mrs. Mary Coyne, a member of his family, a person over the age of ten years, at the same time informing her — the contents thereof, this 30 day of August, 1887; also served this writ on the within-named defendant, David G. Hamilton, by delivering him a copy thereof this 31st day of August, 1887.

CANUTE R. MATSON, *Sheriff,*
By CHAS. GROSS, *Dept.*

Also served this writ on the within-named defendant, Union Stock Yards & Transit Company, by leaving a copy thereof with G. T. Williams, sec't'y of the said company, this 1st day of September,

1887, the pres't & vice-pres't not found in my county of the said U. S. Y. & T. Company this 1st day of Sept., 1887.

CANUTE R. MATSON, *Sheriff*,
By HENRY J. BEER, *Deputy*.

The other within defendants not found in my county this 3rd day of September.

CANUTE R. MATSON, *Sheriff*,
By CHAS. GROSS, *Dep'ty*.

And afterwards, to wit, on the 10th day of September, A. D. 1887, there was filed with the clerk of said court a certain "cross-petition" in words and figures as follows, to wit:

STATE OF ILLINOIS, }
County of Cook, } *ss*:

In the County Court of said Cook County.

60 THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO *vs.* THOMAS TULLY *et al.* } Gen. No. 7215. Proceedings for the Condemnation of Sundry Lots and Parcels of Land for Railroad Purposes.

1. And now comes Ebenezer B. Convers, made a party defendant in the above-entitled suit by the style and name of "E. B. Converse," of the county of Bergen, in the State of New Jersey, and states and shows to said court:

2. That at the date of the bringing of said suit he was and still is solely seized in fee and the owner of that tract of land situate in the city of Chicago, in the county of Cook, in the State of Illinois, known and described as that part of the east half ($\frac{1}{2}$) of the southwest quarter ($\frac{1}{4}$) of section thirty (30), in township thirty-nine (39) north, of range fourteen (14) east, of the third (3d) principal meridian, bounded and described as follows, to wit: Beginning in the east line of said east half ($\frac{1}{2}$) of said southwest quarter ($\frac{1}{4}$) of said section thirty (30), at a point one hundred (100) feet northwesterly from and measured at right angles to the northerly reservation or levee line of the Illinois and Michigan canal, thence running north on said east line to the Chicago river; thence running with said Chicago river to the west line of said east half ($\frac{1}{2}$) of said southwest quarter ($\frac{1}{4}$) of said section thirty (30); thence running south on said west line to the south line of said section thirty (30); thence running east on said south line to a point one hundred (100) feet northwesterly from and measured at right angles to said northerly reservation or levee line, and thence running northeastwardly in a straight line to the place of beginning; which said tract contains forty and one-half (40$\frac{1}{2}$) acres, more or less, — is for convenience hereinafter referred to
61 and designated as the "north tract," and is not mentioned or described in the petition of said railroad company filed in said cause.

3. That at the date of the bringing of said suit he also was and still is solely seized in fee and the owner of that other part of said east half ($\frac{1}{2}$) of said southwest quarter ($\frac{1}{4}$) of said section thirty (30), abutted and bounded northwestwardly by said "north tract" and southeastwardly by said northerly reservation or levee line, which tract last described is situate in said city of Chicago, contains three and one-half ($3\frac{1}{2}$) acres, more or less, is embraced in the description in said petition of the premises sought to be thereby condemned and taken for railroad purposes, and is for convenience hereinafter referred to and designated as the "south tract."

4. That he has never claimed and he hereby expressly disclaims any title, interest, or ownership in that part of the east half ($\frac{1}{2}$) of the northwest quarter ($\frac{1}{4}$) of section thirty-one (31), in township thirty-nine (39) north, of range fourteen (14) east, of the third (3d) principal meridian, mentioned and described in said petition.

5. That said two tracts of land described in the preceding paragraphs numbered 2 and 3, to wit, said "north tract" and said "south tract," lie together and form as a whole a compact body of land containing about forty-four (44) acres, more or less, fronting northwardly on said Chicago river and abutting and fronting on the south for its whole extent (except for a short distance in its southwest part) on said northerly reservation or levee line of said Illinois and Michigan canal, to wit, for a distance of about one-fourth ($\frac{1}{4}$) of a mile, which canal forms a part of a continuous navigable waterway between said city of Chicago (and Lake Michigan with the navigable waters to the seaboard eastward of that lake) and
62 the Mississippi river (and the navigable waters, water-ways, places, States, and Territories accessible to commerce thereby), which canal and levee are, with the landing places thereon, constructed or to be constructed, readily accessible from every part of said whole tract, and all parts of which whole tract are in turn readily accessible from said canal, levee, and landing places, and on or by way of which canal and reservation or levee access to and exit from all parts of said whole tract are also at all times readily to be had to or from other contiguous lands, premises, and highways and to and from other portions of said city of Chicago by persons occupying or to occupy said whole tract or any part thereof and by the business and commerce for the transaction of which said premises are fitted, as hereinafter stated; all of which access, easements, and privileges in respect of said canal and its said appurtenances long had been when said suit was brought and still are held, enjoyed, and to be enjoyed by said premises and by him, said Convers, his heirs and assigns, as by vested right under the law of the land for all time, so long as said canal and its appurtenances should exist, and without interference on the part of others covetous of the same.

6. That at the date of the bringing of said suit he, said Convers, was and still is in the possession of said two first named tracts as a whole, and at large expense had thereon laid out, excavated, and constructed and was in the course of the construction of a system of docks and slips connected with the Chicago river on the north and

having an aggregate linear dock frontage of over six thou-
63 sand (6,000) feet, with loading and landing places for the shipment and transhipment to and from vessels of freight, goods, wares, merchandise, and commodities, and with places and yards for the sale, storage, and keeping of such freights, merchandise, and commodities, and with facilities for the erection of offices, factories, warehouses, and business buildings on said premises, and had in that behalf at great expense filled, graded, leveled, and otherwise improved said premises so that said two tracts might as a whole and in connection with their said frontage on and accessibility to, from, and by way of said levee and canal and to the commerce thereof be profitably operated, used, occupied, rented, or further improved for carrying on thereon the business and commercial enterprises at said city of Chicago which require or use such premises and accom-odations.

7. That said "south tract" (embracing the entire frontage on said canal and levee of said two tracts as a whole and sought to be bodily condemned or taken by said railroad company for the railroad purposes contemplated in and pursuant to said petition) is worth, to wit, the sum of fifty thousand (50,000) dollars.

8. That the condemnation or taking and use by said railroad company for the purposes contemplated by or indicated in said petition of the several tracts of land therein described and sought to be condemned or taken are and will be likewise of great further injury and other damage to him, said Convers, and to his said land, in that it will deprive him of and permanently destroy his use thereof as a whole for the purposes for which he has improved and laid out the same as aforesaid, and in that it will cut off and destroy the said easements and access of said "north tract"
64 with the said docks, slips, and improvements situate thereon and of those who shall rent, occupy, or use the same for commercial or manufacturing purposes or otherwise to and from said canal and levee and from the commerce thereof, and will cut off and deprive the whole of said "north tract" and the persons occupying or to occupy the same and the commerce and business for the transaction of which said premises are improved and fitted as aforesaid from said privileges, easements, and means of access and exit so as aforesaid afforded to and enjoyed by them on or by way of said canal and reservation or levee to and from said contiguous lands, premises, and highways and to and from said other portions of said city of Chicago, and in that it will cut into, render useless, and wholly destroy the value of portions of said system of docks, slips, loading and landing places, &c., so as aforesaid planned, constructed, and in process of construction on said "north tract," and will require portions of said slips and docks already excavated, piled, and fully completed to be filled in and abandoned, and in that it will greatly interfere with and impair the convenient and profitable use of said "north tract" and of said improvements thereon for the purposes for which they are otherwise fitted and designed, to the great damage of him, said Convers, to wit, in the sum of fifty thousand (50,000) dollars.

9. Wherefore said Convers respectfully insists that his full and just compensation for all his damages in the premises shall be ascertained and shall be awarded and paid to him pursuant to law, and that his rights in that behalf shall be fully considered and determined,
65 and he prays a separate trial and assessment in respect of his said damages and of his compensation therefor.

EBENEZER B. CONVERS,
By CHAS. M. STURGES,
His Solicitor.

And afterwards, to wit, on the 12th day of September, A. D. 1887, there was filed with the clerk of said court a certain "petition" in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court of said Cook County.

Cause, Gen. No. 7215.

THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO
vs.
EBENEZER B. CONVERS (Otherwise Known as E. B. CONVERS), Impleaded with THOMAS TULLY and Others.

Proceedings for the Condemnation of Sundry Lots and Parcels of Land for Railroad Purposes.

Your petitioner, Ebenezer B. Convers, shows and states to said county court of Cook county—

That your petitioner is the same person named and described as a party defendant in the above-entitled suit by the style and name of "E. B. Convers."

That at the date of the bringing of said suit your petitioner was and thenceforward to the present time has continued to be and now is a citizen of the State of New Jersey, residing in the county of Bergen, in said State of New Jersey, and during all of said periods was and now is a non-resident of the State of Illinois.

That said The Atchison, Topeka and Santa Fé Railroad
66 Company in Chicago at the date of the bringing of said suit was and thenceforward to the present time has continued to be and now is a citizen of the State of Illinois.

That said suit is of a civil nature at common law or in equity in which there is a controversy, wherein your petitioner is actually interested, wholly between your petitioner and said The Atchison, Topeka, and Santa Fé Railroad Company in Chicago, which controversy can be fully determined as between them in the circuit court of the United States for the northern district of Illinois, sitting in the northern division of said district, the matter in dispute in which controversy exceeds, exclusive of interest and costs, the sum or value of two thousand dollars.

That your petitioner desires to remove such suit and controversy

from said county court of Cook county to said circuit court of the United States, pursuant to the act or acts of Congress in that case made and provided, and to that end (at a time or before the time when the defendant is required by the laws of the State of Illinois or the rules of said county court to answer or plead to the declaration or complaint of the plaintiff) makes and files this his petition, and makes and files with the same his bond, with good and sufficient surety, for his entering in such circuit court, on the first day of its next session, a copy of the record in such suit and for paying all costs that may be awarded by said circuit court if it shall hold that such suit was wrongfully or improperly removed thereto, and also for there appearing and entering special bail in such suit if special bail was originally requisite therein.

Wherefore your petitioner respectfully prays said county
67 court of Cook county to accept said petition and bond and to order the removal of said suit and controversy into said circuit court of the United States, pursuant to the law of the land and said act or acts of Congress, and thereupon to proceed no further in such suit against your petitioner; and your petitioner will ever pray, &c.

EBENEZER B. CONVERS.

CHARLES M. STURGES,
Sol'r and of Counsel for s'd Petitioner.

And afterwards, to wit, on the 12th day of September, A. D. 1887, there was filed with the clerk of said court a certain "bond" in words and figures as follows, to wit:

Know all men by these presents that we, Ebenezer B. Convers, of the county of Bergen, in the State of New Jersey, as principal obligor, and Frank Sturges, of the county of Cook, in the State of Illinois, as surety, are held and firmly bound unto the Atchison, Topeka, and Santa Fé Railroad Company in Chicago, its successors and assigns, and unto all other persons whom it may concern, in the penal sum of five hundred dollars; to the payment whereof, well and truly to be made, we bind ourselves and our heirs, executors, administrators, and assigns, jointly and severally, by these presents.

Witness our hands and seals on this twelfth day of September, A. D. 1887.

The condition of the above obligation is such that whereas said Convers has applied to the county court of Cook county, in the State of Illinois (and to that end herewith files his petition to said county court), to remove to the circuit court of the United States for the northern district of Illinois, sitting in the northern division of said district, a certain suit and controversy pending between said
68 The Atchison, Topeka, and Santa Fé Railroad Company in Chicago and said Convers, in a cause now brought and undetermined in said county court for the condemnation of sundry lots and parcels of land for railroad purposes, in which cause said The Atchison, Topeka and Santa Fé Railroad Company in Chicago is plaintiff (or petitioner) and said Convers, impleaded with Thomas

Tully and many others, is defendant, which cause is numbered with the general number 7215 in said county court:

Now, if the said Convers shall enter in said circuit court of the United States on the first day of its next session a copy of the record in said suit and shall pay all costs that may be awarded by said circuit court if it shall hold that such suit was wrongfully or improperly removed thereto, and shall also there appear and enter special bail in such suit if special bail was originally requisite therein, then this obligation to be void; otherwise to remain in full force and virtue.

EBENEZER B. CONVERS. [SEAL]
FRANK STURGES. [SEAL.]

STATE OF ILLINOIS, } ss:
County of Cook, }

Frank Sturges, of lawful age, being first duly sworn, deposes and says that he is the surety named in and who executed the within and foregoing bond.

That he resides in the county of Cook, in the State of Illinois; that he is the sole owner of unincumbered real estate situate in said Cook county, exclusive of property by law exempt from execution, of the clear value of upwards of two thousand dollars, and that he is worth over & above all his debts & liabilities upwards
69 of two thousand dollars; further he saith not.

FRANK STURGES.

Subscribed and sworn to before me by Frank Sturges on this twelfth day of September, A. D. 1887.

WM. H. FINNEY, [SEAL.]
Notary Public within and for Cook County, in the State of Illinois.

And afterwards, to wit, on the 13th day of September, A. D. 1887, there was filed with the clerk of said court a certain "appearance" in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court of Cook County. September Term, A. D. 1887.

ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO *vs.* THOMAS TULLY *et al.* } No. 7215. Condemnation Proceedings.

And now come Thomas Tully, Henry Koeritz, and John C. Tatge, three of the defendants in the above-entitled cause, by Richard S. Thompson, their attorney, and enter their appearance herein.

RICHARD S. THOMPSON,
Attorney for said Defendants.

And afterwards, to wit, on the same day, there was filed with the clerk of said court a certain appearance in words and figures as follows, to wit:

70 STATE OF ILLINOIS, } ss:
Cook County, }

In the County Court of said County.

ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO
vs.
THOMAS TULLY *et al.*

And now comes the Union Stock Yards and Transit Company, owner of lots nine (9) to twenty-three (23), inclusive, in block seven (7), in Manchester, being a subdivision of a part (north of Illinois and Michigan canal) of the east half of the northeast quarter of section thirty-six (36), township thirty-nine (39) north, of range 13 east, of the third principal meridian, in the county of Cook and State of Illinois, by Irus Coy, its attorney, and enters its appearance in said cause.

IRUS COY,
Att'y for Union Stock Yards and Transit Company.

And afterwards, to wit, on the 19th day of September, A. D. 1887, the same being one of the days of the September term of said court, the following, among other, proceedings were had by and before said court and entered of record, to wit:

ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO
vs.
EBENEZER B. CONVERS, Impleaded with THOMAS TULLY *et al.*
} Condemnation.

On motion of said Ebenezer B. Convers, by Charles M. Sturges, his solicitor, the court accepts the petition and bond of the said Convers, filed on the first day of this term, for the removal of the suit and controversy in the above-entitled cause between said
71 railroad company and said Convers to the circuit court of the United States for the northern district of Illinois, sitting in the northern division of said district, and orders said removal to be made pursuant to the prayer of said petition.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Henry Wulff, clerk of the county court of Cook county, in the State aforesaid, do hereby certify that the above and foregoing is a true, correct, and complete transcript of the record in a certain cause pending in said court, wherein The Atchison, Topeka and Santa Fé Railroad in Chicago was plaintiff and Thomas Tully *et al.*

defendants; all of which appears from the records and files at my office.

In witness whereof I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this twenty-eighth day of September, A. D. 1887.

HENRY WULFF,
Clerk of the County Court. [SEAL.]

Endorsed: Filed Oct. 3, 1887. Wm. H. Bradley, clerk.

72 Afterwards, to wit, on the twentieth day of February, 1888, came the defendant E. B. Convers, by his attorney, and filed in said clerk's office his appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

Appearance.

UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division. }

In the Circuit Court of the United States for the District and Division Aforesaid.

THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO
vs.
EBENEZER B. CONVERS, Impleaded with THOMAS TULLY *et al.*
} Condemnation Proceeding.

I hereby enter my appearance in the above-entitled cause as counsel and attorney for the defendant Ebenezer B. Convers.

R. S. THOMPSON.

Endorsed: Filed Feb'y 20, 1888. Wm. H. Bradley, clerk.

73 Afterwards, to wit, on the first day of March, 1888, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

Stipulation.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } *ss:*

In the Circuit Court of the United States for the Northern District of Illinois, Sitting in the Northern Division of said District.

THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO
v.
EBENEZER B. CONVERS, Impleaded with WILLIAM C. D. GRANNIS *et al.* } Gen. No. 20704.

THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO
v.
EBENEZER B. CONVERS, Impleaded with THOMAS TULLY *et al.* } Gen. No. 20705.

It is hereby stipulated and agreed by and between said The Atchison, Topeka and Santa Fé Railroad Company in Chicago and said Ebenezer B. Convers that the above-entitled causes,
74 wherein they are parties, be consolidated each with the other and thenceforward proceed and be heard and determined as one cause and under the title and number of the cause first above entitled, to wit, gen. No. 20704.

WILLIAMS & THOMPSON,
Att'ys for said Railroad Company.
R. S. THOMPSON AND
CHARLES M. STURGES,
Att'ys for said Convers.

Endorsed: Filed March 1, 1888. Wm. H. Bradley, clerk.

75 On the same day, to wit, on the first day of March, 1888, in the December term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Romanzo Bunn, district judge, is the following entry, to wit:

Order.

THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO
vs.
EBENEZER B. CONVERS, Impleaded with WILLIAM C. D. GRANNIS *et al.* } 20704. Proceeding to Condemn Land.

THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO
vs.
EBENEZER B. CONVERS, Impleaded with THOMAS TULLY *et al.* } 20705. Proceeding to Condemn Land.

And now come in the above-entitled causes the said railroad com-

pany and the said Ebenezer B. Convers, by their respective attorneys, upon whose stipulation, now filed, it is ordered by the court that said two causes be consolidated each with the other, and henceforth proceed and be heard and determined as one cause and under the title and number of the cause first above entitled, to wit,
76 general number 20704; and the parties being now ready for trial, now comes a jury of good and lawful men, to wit, A. C. Best, J. W. Ward, O. H. Partch, George W. Burchard, Charles Walsh, Timothy Cochran, George W. Lewis, C. A. Nash, James C. Thomas, B. L. Phelps, William Petty, and C. H. Hills, who were all duly elected and tried and sworn as follows: You and each of you do solemnly swear that you will well and truly ascertain and report just compensation to the owner and each owner of the property which it is sought to take or damage in this case, and to each person therein interested, according to the facts in the case as the same may be made to appear by the evidence, and that you will truly report such compensation so ascertained, so help you God. And after hearing the opening statements of the counsel, by agreement of the parties, by their attorneys, the jury go, in charge of an officer of the court, to view the property sought to be taken; and thereupon it is ordered that the further trial of this cause be postponed until to-morrow morning.

77 Afterwards, to wit, on the second day of March, 1888, in the December term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Romanzo Bunn, district judge, is the following entry, to wit:

Order.

THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO *v.* EBENEZER B. CONVERS, Impleaded, &c.	Proceeding to Condemn Land.

Now come again the parties, by their respective attorneys, and now come also the jury in this behalf empaneled and sworn; and, after hearing the evidence, the hour of adjournment having arrived, it is ordered that the further trial of this cause be postponed until to-morrow morning.

78 Afterwards, to wit, on the third day of March, 1888, in the December term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Romanzo Bunn, district judge, is the following entry, to wit:

Order.

THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO
vs.
EBENEZER B. CONVERS, Impleaded with WILLIAM C. D. GRANNIS *et al.*
} Proceeding to Condemn Land.

Now come again the parties, by their respective attorneys, and now comes also the jury in this behalf empaneled and sworn; and, after hearing the concluding arguments of the counsel and receiving the instructions of the court, the jury retired to consider of their verdict, and after a short absence the jury returned into court the following verdict, to wit: And now, to wit, on the third day of March, A. D. 1888, the jury empaneled and sworn in the above-entitled cause do report that, after having been duly empaneled and sworn and after hearing the proofs offered by the parties, they have well and truly ascertained the amount of just compensation to be paid to the several owners of and parties interested in the property sought
79 to be taken, and that the jury do find and report that the petitioner in the above-entitled cause take from the owners and parties interested therein the following-described land and premises, parcel of the land described in the petitions filed in theses causes, to wit:

That part of the east half of section thirty (30), township thirty-nine (39) north, of range fourteen (14) east, of the third principal meridian, bounded as follows, to wit: Beginning at a point in the west line of said east half of section thirty (30) one hundred sixty-six and seven-tenths (166.7) feet north from the northerly reservation or levee line of the Illinois & Michigan canal, thence running south on said west line to said northerly reservation or levee line; thence running northeasterly on said northerly reservation or levee line eighty-two and ninety-four hundredths (82.94) feet; thence running in a straight line one hundred and fifty-six and fifty-seven hundredths (156.57) feet, more or less, northwesterly to the place of beginning; also that part of the east half of the southwest quarter of section 30 aforesaid described as follows: Beginning on the east line of said southwest quarter at the intersection of said east line with the northerly line of the reservation of the Illinois and
80 Michigan canal aforesaid, thence running southwesterly on said reservation line to the point of intersection of said line with the south line of section 30 aforesaid; thence running west along said south line to a point on said south line which is one hundred feet distant from said northerly reservation line, measured at right angles to said reservation line; thence running northeastwardly on a line parallel with the said northerly reservation line of said canal and one hundred feet distant therefrom to the east line of the southwest quarter of section 30 aforesaid; thence south along said last-mentioned line to the place of beginning.

And that the owners and parties interested therein are entitled to

the sum of twelve thousand dollars, the value of the land taken and all improvements thereon, in full compensation for the same.

And as to the property described in the cross-petition of Ebenezer B. Convers other than the property hereinabove described, being those portions of the east half of the southwest quarter of section 30 aforesaid lying between the tract above described and the west fork of the south branch of the Chicago river, the jury report that the owners of said property are not entitled to compensation for damage thereto by reason of the taking and use of the property above described; and thereupon the defendant, by his attorney, moves the court for a new trial herein.

81 Afterwards, to wit, on the twenty-seventh day of March, in the adjourned March term of said court, 1888, in the record of the proceedings thereof in said entitled cause, before Hon. Romanzo Bunn, district judge, is the following entry, to wit:

Judgment.

ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO *vs.* EBENEZER B. CONVERS, Impleaded with WILLIAM C. D. GRANNIS *et al.* } Petition to Condemn Land.

And this day comes the petitioner, by Williams & Thompson and E. J. Harkness, its attorneys, and the respondents, by Charles M. Sturges and R. S. Thompson, their attorneys, also come, and now comes on to be heard the motion of the respondent for a new trial herein; and, after hearing the arguments of the respective counsel, the court, being now fully advised upon said motion, overrules the same, and the respondent, by his attorney, now moves the court in arrest of judgment; and the court, being now fully advised upon said motion in arrest, overrules the same; to which ruling of the court upon both of said motions the respondent, by his attorney, now excepts; and thereupon the petitioner, by its said attorneys,

82 moves for judgment upon the verdict of the jury, heretofore found, filed, and recorded herein, in respect to the compensation to be paid by the petitioner to the owners of and persons interested in the premises hereinafter described for the appropriation by the petitioner for its railroad purposes of said premises, to wit, that part of the east half of section thirty (30), township thirty-nine (39) north, of range fourteen (14) east, of the third principal meridian, bounded as follows, to wit: Beginning at a point in the west line of said east half of section 30 one hundred sixty-six and seven-tenths (166.7) feet north from the northerly reservation or levee line of the Illinois and Michigan canal, thence running south on said west line to said northerly reservation or level line; thence running northeasterly on said northerly reservation or level line eighty-two and ninety-four hundre-ths (82.94) feet; thence running in a straight line one hundred fifty-six and fifty-seven hundre-ths (156.57) feet,

more or less, northwesterly to the place of beginning; also that part of the east half of the southwest quarter of section 30 aforesaid described as follows: Beginning on the east line of said southwest quarter at the intersection of said east line with the northerly line of the reservation of the Illinois and Michigan canal aforesaid, thence running
83 southwesterly on said reservation line to the point of intersection of said line with the south line of section 30 aforesaid; thence running west along said south line to a point on said south line which is one hundred (100) feet distant from said northerly reservation line, measured at right angles to said reservation line; thence running northeastwardly on a line parallel with the said northerly reservation line of said canal and one hundred (100) feet distant therefrom to the east line of the southwest quarter of section 30 aforesaid; thence south along said last-mentioned line to the place of beginning, all in Cook county, Illinois; and, all parties being heard and the court being fully advised in the premises, it is hereby ordered, adjudged, and decreed by the court that the sum of money awarded by the jury in and by their said verdict to the owners and parties interested in the property above described is a just compensation for the taking of said premises for the railroad purposes of the petitioner herein and for all damages to property not taken.

And it is further ordered that the petitioner pay to the county treasurer of Cook county, Illinois, for the benefit of the owners and parties interested in the premises above described, the sum of twelve thousand dollars ($12,000), being the amount awarded by said jury in and by their said verdict.

84 It is further ordered, adjudged, and decreed that upon the making of said payment to the said county treasurer the petitioner, The Atchison, Topeka & Santa Fé Railroad Company in Chicago, may enter upon the premises above described and the use of the same for railroad purposes.

On the hearing of said cause the following exceptions were taken and were allowed by the court and made of record; which said exceptions are in the words and figures following, to wit:

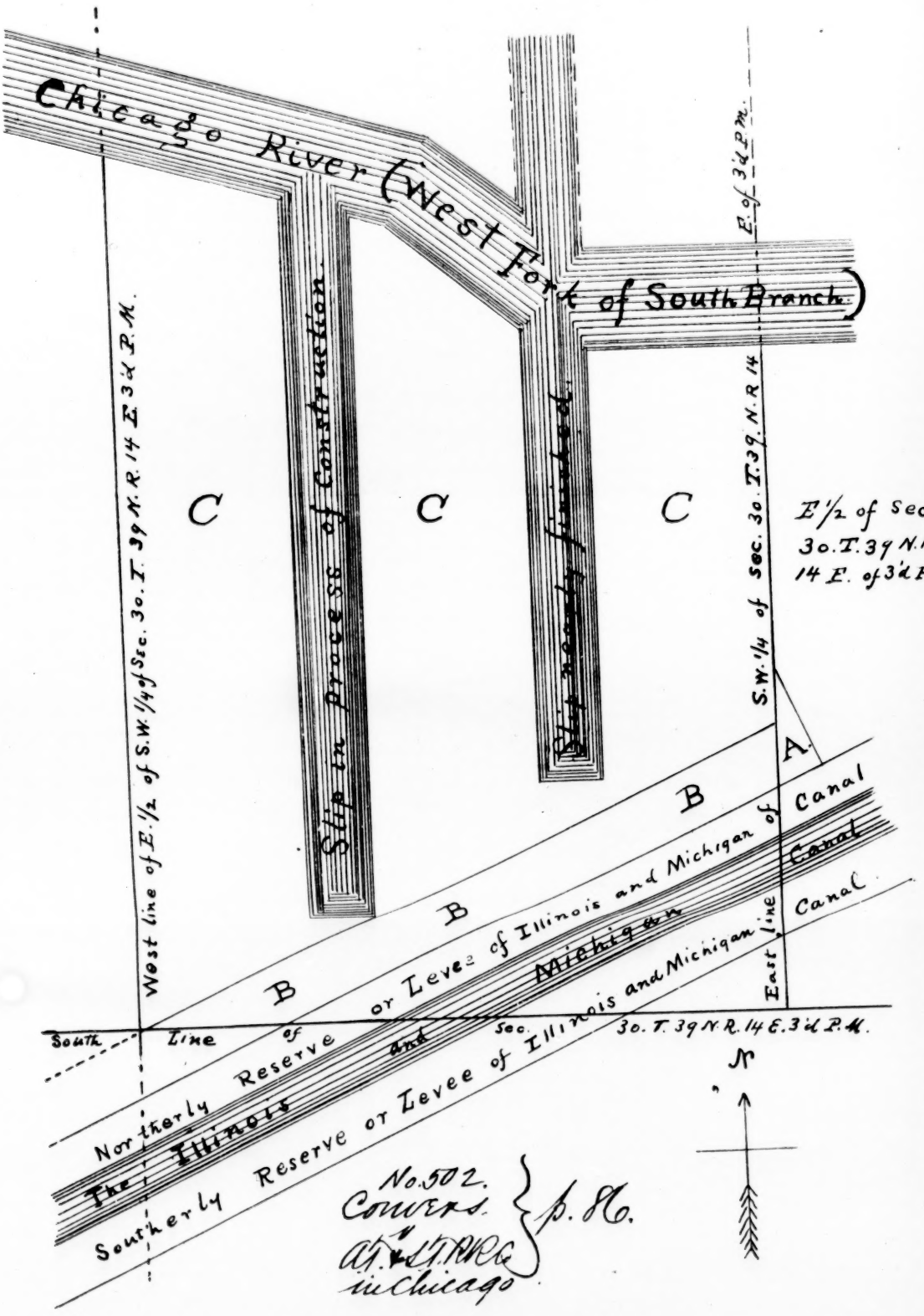
85 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, Northern Division, }

In the Circuit Court of the United States for the Northern District of Illinois, Sitting in the Northern Division of said District, of the March Term, A. D. 1888.

THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO
vs.
EBENEZER B. CONVERS, Impleaded with WILLIAM C. D. GRANNIS *et al.*
} Nos. 20704 and 20705. Consolidated Causes.

Be it remembered—

1. That on the trial of the above-entitled consolidated causes on


Chicago River (West Fork of South Branch)
Slip in process of Construction.
Slip recently finished.
West line of E. 1/2 of S.W. 1/4 of Sec. 30. T. 39 N. R. 14 E. 3d P.M.
E. of 3d P.M.
S.W. 1/4 of Sec. 30. T. 39 N. R. 14
E 1/2 of Sec. 30. T. 39 N.R 14 E. of 3d PM.
C
C
C
B
B
B
A.
Canal
Canal
Northerly Reserve or Levee of Illinois and Michigan Canal
Southerly Reserve or Levee of Illinois and Michigan Canal
East line
South Line of Sec. 30. T. 39 N. R. 14 E. 3d P.M.
The Illinois and Michigan
N
No. 502.
Covers
A. T. & S. F. R.R.
in Chicago
} p. 86.

the first, second, and third days of March, A. D. 1888, before the Honorable Romanzo Bunn, a district judge of said United States, sitting in said district, and a jury, the evidence and proceedings were restricted to those tracts of land or premises situate in the city of Chicago, in the county of Cook, in the State of Illinois, delineated in the plat or diagram thereof here following, to wit:

(Here follows diagram marked p. 86.)

87 2. That on said trial the premises marked A in said diagram were identified by said evidence with the tract of land particularly described in the second paragraph of the cross-petition of Ebenezer B. Convers prior to the removal of said cause to said circuit court and prior to the consolidation of causes herein filed, to wit, on the tenth day of September, A. D. 1887, in the one of said now consolidated causes then separately pending in the county court of said Cook county wherein said Convers had been impleaded with William C. D. Grannis and others as defendants therein, but as said original second paragraph was amended by said Convers' amendment prior to said consolidation of said causes, and on the twenty-eighth day of February, A. D. 1888, filed in said circuit court of the United States in said cause last named, then separately pending in said circuit court: which premises marked A were also on said trial identified by said evidence as a portion of the real estate described in and sought to be taken or condemned for railroad purposes by the original petition of said railroad company before the removal of said last-named cause, filed, to wit, on the seventh day of June, A. D. 1887, in said cause, then separately pending in said county court, wherein said Convers was impleaded as aforesaid with said Grannis and others.

3. That on said trial the premises marked B in said diagram were identified by said evidence with the tract of land particularly described and designated as the "south tract" in the third paragraph of the cross-petition of said Convers prior to the removal of said cause to said circuit court, filed, to wit, on the tenth day of September,

88 A. D. 1887, in the one of said now consolidated causes then separately pending in said county court wherein said Converse had been impleaded with Thomas Tully and others as defendants therein; which premises marked B were also on said trial identified by said evidence as a portion of the real estate described in and sought to be taken or condemned for railroad purposes by the original petition of said railroad company before the removal of said cause last named, filed, to wit, on the tenth day of June, A. D. 1887, in said cause, then separately pending in said county court, wherein said Converse was impleaded as aforesaid with said Tully and others.

4. That on said trial the premises marked C in said diagram were identified by said evidence with the tract of land particularly described and designated as the "north tract" in the second paragraph of said last-mentioned cross-petition of said Converse.

5. That on said trial it was, for the purposes of said trial, stipu-

lated and agreed by and between said railroad company and said Convers, by their respective counsel, that said premises marked A and B in said diagram contained, taken together, an aggregate of three (3) acres of land, and that said premises marked C in said diagram contained, including the slips or docks in process of construction thereon, forty (40) acres of land, more or less.

6. That on said trial said railroad company, to maintain the issues on its part, introduced evidence tending to prove that at the date of the filing of said original petitions of said railroad company the fair cash market value of said tracts of land marked A and B in said diagram did not exceed thirty-five hundred dollars per acre, and likewise tending to show that the proposed condemnation and use of said tracts for railroad purposes under said petitions would be of no damage to, but, on the contrary, would be of benefit to, said tract of land marked C in said diagram; and likewise introduced in evidence, without objection thereto, an ordinance of the municipal council of said city of Chicago giving said railroad company permission to lay its tracks in said city on condition that it should extend railroad facilities to premises abutting on its course in said city; and likewise introduced evidence tending to show the railroad facilities which said railroad company was organized and fitted to give; and having introduced this evidence said railroad company thereupon rested its case without having introduced any evidence tending to show the quality or extent of the ownership or interest of said Convers at any time in said tracts marked A, B, and C in said diagram or either of them, or that said ownership or interest were or were not absolute, exclusive, or unincumbered.

89

7. That thereupon on said trial said Convers, to maintain the issues on his part, introduced evidence tending to prove that at said date of the filing of said original petitions of said railroad company the fair cash market value of said tracts of land marked A and B on said diagram was as much as fourteen thousand dollars per acre, and that the proposed condemnation or use of said tracts for railroad purposes contemplated by said petitions would damage said tract marked C in said diagram to as much as sixty-nine thousand dollars (in excess of any benefit to be derived by said tract C from said proposed railroad) by depriving said track marked C of its access to and connection with the Illinois and Michigan canal and its appurtenances; that in the course of said evidence introduced by said Convers there was evidence tending incidentally to show that at the date of the filing of said original petitions of said railroad company he was, by his agents, in the process of constructing two slips or docks on said tract marked C, and that tenants claiming under him were then in occupancy of said tracts marked A and B; but said Convers on said trial introduced no direct or other evidence tending to prove the quality, nature, extent, or exclusiveness of his interest, title, ownership, or estate, or the title papers or muniments by which he claimed or held the same, or that any his interest, title, ownership, or estate in said premises were not in whole or in part subject to liens, adverse claims, or titles held

90

by or vested in other persons; and thereupon said Convers rested his case.

8. That said railroad company thereupon introduced no further or rebutting evidence, and the foregoing were all the proofs and evidence introduced or heard on said trial.

9. That on said trial and on the conclusion of the arguments of counsel to said jury said railroad company, by its counsel, tendered to the court a form to be followed by the jury in finding and making its verdict and report, and prayed the court to charge the jury that said form embraced and indicated the true issues in said consolidated causes to be found and passed on by said jury, and to further charge said jury to follow and be governed by said form in that behalf, except in the particulars in respect whereof blanks to be filled by said jury were left in said form, which form, with said blanks left therein to be so filled, was in the words, figures, and manner following, to wit:

91 "UNITED STATES OF AMERICA, } ss:
"*Northern District of Illinois,* }

"In the Circuit Court for said District.

"ATCHISON, TOPEKA & SANTA FÉ RAILROAD COMPANY IN CHICAGO *vs.* EBENEZER B. CONVERS, Impleaded with WILLIAM C. D. GRANNIS *et al.* } Nos. 20704, 20705. Consolidated Cases.

"And now, to wit, on the (—) day of March, A. D. 1888, the jury empaneled and sworn in the above-entitled cause do report that, after having been duly empaneled and sworn and after hearing the proofs offered by the parties, they have well and truly ascertained the amount of just compensation to be paid to the several owners of and parties interested in the property sought to be taken.

"And that the jury do find and report that the petitioner in the above-entitled cause take from the owners and parties interested therein the following-described land and premises, parcel of the land described in the petitions filed in these causes, to wit:

"That part of the east half of section thirty (30), township thirty-nine (39) north, of range fourteen (14) east, of the third principal meridian bounded as follows, to wit: Beginning at a point in the west line of said east half of section thirty (30) one hundred sixty-six and seven-tenths (166.7) feet north from the northerly reservation or levee line of the Illinois & Michigan canal, thence running south on said west line to said northerly reservation or levee line; thence running northeasterly on said northerly reservation or levee line eighty-two and ninety-four hundredths (82.94) feet; thence running in a straight line one hundred and fifty-six and fifty-seven hundredths (156.57) feet, more or less, northwesterly to
92 the place of beginning. Also that part of the east half of the southwest quarter of section thirty (30) aforesaid described as follows: Beginning on the east line of said southwest quarter at

the intersection of said east line with the northerly line of the reservation of the Illinois and Michigan canal aforesaid, thence running southwesterly on said reservation line to the point of intersection of said line with the south line of section thirty (30) aforesaid; thence running west along said south line to a point on said south line which is one hundred feet distant from said northerly reservation line measured at right angles to said reservation line; thence running northeastwardly on a line parallel with the said northerly reservation line of said canal and one hundred feet distant therefrom to the east line of the southwest quarter of section 30 aforesaid; thence south along said last-mentioned line to the place of beginning.

"And that the owners and parties interested therein are entitled to the sum of (—) dollars, the value of the land taken and all improvements thereon, in full compensation for the same.

"And as to the property described in the cross-petitions of Ebenezer B. Convers other than the property hereinabove described, being those portions of the east half of the southwest quarter of section (30) aforesaid lying between the tracts above described and the west fork of the south branch of the Chicago river, the jury report that the owners of said property are (—) entitled to (—) compensation for damages thereto by reason of the taking and use of the property above described."

10. That thereupon on said trial said Convers, by his coun-
93 sel, objected to said form of verdict and report so tendered to the court, to be charged by it to said jury, and to the granting of the said prayer of said railroad company in respect thereof, for the reasons following: Because it was not competent or lawful for said jury in said consolidated causes to ascertain the compensation of any person other than said Convers; and because it was not competent or lawful for said court or jury in said causes to take or condemn any right, title, or interest in said land except that of the said Convers; and because the ascertainment and determination of the compensation to any owners or persons interested in said land other than said Convers, if any such there were, remained with those persons in the county court of Cook county aforesaid for adjudication, and could not lawfully be included or confused with the compensation and separate controversy of said Convers at issue in said circuit court of the United States; and because said Convers was, in said circuit court, on the trial of said consolidated causes, entitled to have said jury find and ascertain his separate compensation disconnected with that of any other person or persons; and because the burden of proof was on said railroad company in the first instance on said trial as to certainty in respect of the ownership or interest of said Convers in said premises and in respect of the quantum or quality of such ownership or interest; and thereupon said Convers, by his counsel, in further opposition to said form of verdict and report so tendered on the part of said railroad company, prayed the court to change and modify said form by restricting the same so that it

should respond to and speak in respect of the ownership and
94 compensation of said Convers alone, or so that it should fit a finding by the jury of his separate compensation in the premises, and to charge said modified or restricted form to the jury in place of the form so as aforesaid tendered by said railroad company; and in that behalf said Convers, by his counsel, insisted that he, said Convers, was in said circuit court, on said trial of said consolidated causes, entitled to have his separate, just compensation in the premises found and ascertained by said jury without the same being blended and confused with the compensation of other persons not before said circuit court, and that he was in like manner entitled to have his separate controversy in said consolidated causes passed upon and determined by said jury by itself, and without its being intermingled with the controversies or rights of such other persons.

11. That thereupon the court overruled said prayers and objections of said Convers and granted said prayer of said railroad company, and charged and instructed said jury that it should make and find its verdict and report in compliance with the said form tendered by said railroad company, and that said form last named embraced and responded to the true issues before the court and jury in said consolidated causes, which issues were the ascertainment of the entire value of said tracts marked A and B in said diagram, and the entire damage, if any, to said tract marked C on said diagram, without regard to what persons (said Convers or otherwise) owned or were interested in said tracts respectively, and without regard to what the ownership or interest, if any, of said Convers was in said tracts or either of them, and in overruling said prayers and objec-
95 tions of said Convers the court ruled and stated in the presence of said jury that no adequate proofs of the title of said Convers in the premises were before the court or jury, and that the question of what portion or separate share in said entire compensation or damage, if any, said Convers was entitled to was not a question for the jury herein, and that that question would come up to be settled on an application to the court to distribute such entire compensation or damages as should be found by the jury, on which application all persons, whether said Convers or others, owning or having interests in said tracts of land would have to show up their titles and interests before the court, to the end that such entire fund representing the land should then be distributed by the court proportionately to such ownerships and interests then shown, and the court then and there refused to modify or restrict said form of verdict and report in any manner as so prayed by said Convers, and likewise refused to submit said separate compensation, damages, or controversy of said Convers to the consideration or finding of said jury; to each of which rulings and charges of the court and to said several refusals of the court said Convers, when and as they were respectively made, then and there, by his counsel, excepted.

12. That thereupon and on the third day of March, A. D. 1888, said jury, having retired and considered of its verdict and report in the premises, returned into court and filed as such their verdict and report the said original form so charged to them as aforesaid

by the court, with no change therein other than that the jury caused the same to be signed by their foreman and filled the first
96 blank left in said form with the word "third" and filled the second blank left therein with the words "twelve thousand," and filled the third blank left therein with the word "not;" nor did said jury find or make any other or further report than the one last mentioned, nor was any amendment thereto made by said court or jury at any time, and said jury was thereupon discharged.

13. That in said verdict and report the tract firstly described as taken is identical with said tract marked A in said diagram, and the tract secondly described as taken is identical with said tract marked B in said diagram.

14. That upon said return and filing of said verdict and report said Convers, by his counsel, moved the court to set aside and quash the said verdict and report and to grant to him a new trial in the premises; and thereupon the court gave to said Convers leave to bring his said motion on to be heard and to file his grounds and reasons in support of said motion as he should be advised in that behalf.

15. That afterwards and on the twenty-seventh day of March, A. D. 1888, said Convers, by his counsel, brought on to be heard his said motion to quash and for a new trial, and in that behalf filed in said consolidated causes his grounds and reasons in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } *ss:*

In the Circuit Court of the United States for said District and Division.

97 THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO
v.
EBENEZER B. CONVERS, Impleaded with WILLIAM C. D. GRANNIS *et al.*
} Gen. No. 20704. Consolidated Causes in Condemnation.

And now comes the said defendant, Ebenezer B. Convers, by Charles M. Sturges and R. S. Thompson, his attorneys, and specifies to the court the following grounds and reasons in support of his motion for a new trial herein, viz:

1. Because the court on the first trial erred in giving the portions of his charge to the jury then excepted to by said Convers.

2. Because the court on said first trial refused to further charge and instruct the jury according to the prayers of said Convers.

3. Because the verdict and report of said jury do not separately show, ascertain, or find the just compensation and damages of said Convers in the premises, as he is by law entitled to have the same shown, ascertained, and found.

4. Because said verdict and report are irresponsive to and incon-

clusive on the separate rights, controversy, and compensation of said Convers at issue in this cause.

5. Because said verdict and report blend and confuse said separate rights, controversy, and compensation of said Convers with those of other owners or parties in interest, over which this court has no jurisdiction and which remain for trial and adjudication in the county court of Cook county, whence this case was removed.

6. Because it is impossible to determine or distinguish from said verdict and report how much or what compensation was
98 found or awarded to said Convers for his interest in the land.

7. Because the issues submitted to said jury in the form of verdict and report charged and tendered to them by the court were unlawfully so submitted and were beyond the jurisdiction of said court and jury in this cause.

8. Because the land and the interests therein described and responded to in said verdict and report are variant and different from those lawfully at issue in this cause.

9. Because said verdict and report are illegal in form and substance and are contrary to the law and evidence in this case and to the lawful issues therein.

R. S. THOMPSON,
CHARLES M. STURGES,
Attorneys for said Convers.

Endorsed: Filed March 27, 1888. Wm. H. Bradley, clerk.

99 16. That said motion to quash and for a new trial, having been thereupon and on said twenty-seventh day of March, A. D. 1888, argued by counsel for said Convers and said railroad company, and having been considered by the court, was thereupon refused and overruled by the court; to which ruling and refusal said Convers, by his counsel, then and there excepted.

17. That thereafter and on said twenty-seventh day of March, A. D. 1888, said Convers, by his counsel, made and filed in said cause his written motion and grounds in support thereof in arrest of judgment in said cause, the same being in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } *ss:*

In the Circuit Court of the United States for the said District and Division.

THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO	Gen. No. 20704. Consolidated Causes in Condemnation.
v.	
EBENEZER B. CONVERS, Impleaded with WILLIAM C. D. GRANNIS *et al.*	

And now comes the said defendant, Ebenezer B. Convers, by Charles M. Sturges and R. S. Thompson, his attorneys, and moves

the court in arrest of judgment in this cause, and in support of such motion specifies to the court the grounds and reasons following, to wit:

1. Because the issues of fact in this cause have not been determined, but remain still pending and at large, so that this cause is not ripe for such judgment.

2. Because there has been no verdict or report of a jury in this cause upon the separate rights, controversy, or compensation of said Convers upon which judgment can lawfully be entered.

3. Because this court has no jurisdiction to enter or render a judgment conformably to the verdict or report of the jury found and filed in this cause.

4. Because the prior proceedings and action had in this cause up to this time are insufficient in law and fact as a legal foundation for the judgment of the court thereon proposed to be now entered.

R. S. THOMPSON,
CHARLES M. STURGES,
Attorneys for said Convers.

Endorsed: Filed March 27, 1888. Wm. H. Bradley, clerk.

18. That thereafter and on the twenty-seventh day of March, A. D. 1888, the court, upon argument of counsel and on consideration thereof, overruled said motion in arrest of judgment, and, upon the motion of said railroad company, by its counsel, and against the objections of said Convers, ordered the judgment shown of record in said consolidated causes to be entered of record; to which several rulings and decisions of the court in overruling said motion in arrest of judgment and in causing said judgment to be entered in manner and form as so shown of record said Convers, by his counsel, then and there excepted.

19. That the only parties who at any time appeared in said circuit court of the United States in said causes or participated in the trial aforesaid or in any of the proceedings had in said causes in or before said circuit court, including the entry of the final judgment aforesaid, were the said railroad company and the said Convers, by their respective attorneys and counsel.

20. And forasmuch as the several matters and things aforesaid do not otherwise fully or sufficiently appear of record in said consolidated causes, I, the said Romanzo Bunn, district judge as aforesaid, have to these presents set my hand and seal at said term and district and on this twenty-seventh day of March, A. D. 1888.

ROMANZO BUNN, [SEAL.]
District Judge as Aforesaid.

We have agreed upon the foregoing bill of exceptions.

WILLIAMS & THOMPSON,
Att'ys for the Atchison, Topeka and Santa Fé Railroad Company in Chicago.
CHAS. M. STURGES,
Att'y for Ebenezer B. Convers.

Endorsed: Filed March 27, 1888. Wm. H. Bradley, clerk.

102 Afterwards, to wit, on the twenty-eighth day of July, 1888, there was filed in said clerk's office a bond in said entitled cause; which said bond is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, Ebenezer B. Convers, of the county of Bergen, in the State of New Jersey, as principal obligor, and Frank Sturges, of the city of Chicago, in the county of Cook, in the State of Illinois, as surety, are held and firmly bound unto the Atchison, Topeka and Santa Fé Railroad Company in Chicago in the penal sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to said The Atchison, Topeka and Santa Fé Railroad Company in Chicago, its successors and assigns; to which payment, well and truly to be made, we bind ourselves and our heirs, executors, and administrators, jointly, severally, and firmly, by these presents.

Sealed with our seals and dated on this twenty-eighth day of July, A. D. 1888.

The condition of the above obligation is such that whereas the above-named Ebenezer B. Convers hath sued out a writ of error, returnable to the Supreme Court of said United States, to reverse the judgment lately, to wit, on the twenty-seventh day of March,
103 A. D. 1888, rendered in the circuit court of said United States for the northern district of Illinois, sitting in the northern division of said district, in a certain cause in said circuit court then depending, wherein said The Atchison, Topeka and Santa Fé Railroad Company in Chicago was plaintiff and the said Convers was defendant: Now, if the said Convers shall prosecute his said writ of error to effect and, if he shall fail to make his plea good, shall well and truly answer all costs, then this obligation shall be void; otherwise to remain in full force and virtue.

EBENEZER B. CONVERS. [SEAL.]
FRANK STURGES. [SEAL.]

Approved:
H. W. BLODGETT, *Judge.*

The foregoing security is satisfactory to us.
WILLIAMS & THOMPSON,
Attorneys for the Atchison, Topeka and Santa Fé Railroad Company in Chicago.

Endorsed: Filed July 28, 1888. Wm. H. Bradley, clerk.

104 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the rec-

ord of all the proceedings had in said court in the cause wherein Atchison, Topeka and Santa Fé Railroad Company in Chicago is the plaintiff and Ebenezer B. Convers, impleaded with William C. D. Grannis *et al.*, is the defendant, as the same appear from the records and files of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, the fifteenth day of September, 1888.

WM. H. BRADLEY, *Clerk.*

105 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court, between The Atchison, Topeka and Santa Fé Railroad Company in Chicago, plaintiff, and Ebenezer B. Convers, defendant, in an action for the condemnation of land for railroad purposes, a manifest error hath happened, to the great damage of the said Ebenezer B. Convers, as by his complaint appears, and it being fit that the error, if any there has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1888, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

Witness the Hon. Samuel F. Miller, acting Chief Justice of the Supreme Court of the United States, this twenty-eighth day of July, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the 113th year.

WM. H. BRADLEY,
Clerk of the United States Circuit Court for the Northern District of Illinois.

[Endorsed:] Supreme Court of the United States. Ebenezer B. Convers, plaintiff in error, *vs.* The Atchison, Topeka and Santa Fé Railroad Co. in Chicago, defendant in error. Original writ of error. (Copy is deposited for the defendant in error in the clerk's office U. S., northern district of Illinois.)

106 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

To the Atchison, Topeka and Santa Fé Railroad Company in Chicago, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, A. D. 1888, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Ebenezer B. Convers is the plaintiff in error and The Atchison, Topeka and Santa Fé Railroad Company in Chicago is the defendant in error, to show cause, if any there be, why the record, proceedings, and judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, district judge for the northern district of Illinois, this twenty-eighth day of July, in the year of our Lord one thousand eight hundred and eighty-eight.

H. W. BLODGETT, *Judge.*

Due service of the foregoing citation is acknowledged on this twenty-eighth day of July, A. D. 1888.

WILLIAMS & THOMPSON,
Attorneys for said Defendant in Error.

Serve Williams & Thompson, att'ys.

[Endorsed:] Supreme Court of the United States. Ebenezer B. Convers *vs.* The Atchison, Topeka and Santa Fé Railroad Company in Chicago. Citation to October term, A. D. 1888. Filed Aug. 8, 1888. Wm. H. Bradley, clerk. Charles M. Sturges, att'y for plaintiff in error.

107 In the Supreme Court of the United States.

EBENEZER B. CONVERS, Plaintiff in Error, *v.* THE ATCHISON, TOPEKA AND SANTA FÉ RAILROAD COMPANY IN CHICAGO, Defendant in Error.	In Error to the Circuit Court of the United States for the Northern District of Illinois.

And now comes Ebenezer B. Convers, plaintiff in error as aforesaid, by Charles M. Sturges, his attorney, and says that in the record, proceedings, and judgment aforesaid there is manifest error, in this, to wit:

1. Because said circuit court erred in its charge to the jury and in overruling the objections and prayers of said plaintiff in error in respect of said charge as the same are respectively set forth in the bill of exceptions in said record.

2. Because said circuit court erred in refusing to charge the jury, as prayed by said plaintiff in error, as set forth in said bill of exceptions.

3. Because said circuit court refused to submit to the jury the separate controversy of said plaintiff in error, of which controversy alone said circuit court had jurisdiction.

4. Because said circuit court had no jurisdiction of the issues which it did submit to the jury.

5. Because said circuit court in said proceedings and judgment unlawfully blended and confused the separate controversy of said plaintiff in error with the controversies of other persons, strangers in said circuit court, over whom it had no jurisdiction and whose rights remained for adjudication in the county court of Cook county, in the State of Illinois, where they were left upon the removal by said plaintiff in error of his separate controversy to said circuit court.

6. Because said judgment and proceedings are irresponsive to said separate controversy of said plaintiff in error.

7. Because said circuit court had no jurisdiction to entertain said proceedings and to render said judgment in manner and form as shown by said record.

Wherefore said plaintiff in error prays that said judgment and proceedings may be reversed, annulled, and wholly for naught held, and that he may be restored to all things which he hath lost by reason thereof.

CHARLES M. STURGES,
Attorney for said Plaintiff in Error.

[Endorsed:] Supreme Court of United States. 20704, 20705. Ebenezer B. Convers, plaintiff in error, *v.* The Atchison, Topeka and Santa Fé Railroad Company in Chicago, defendant in error. Assignment of errors. Filed July 28, 1888. Wm. H. Bradley, clerk. Charles M. Sturges, att'y for pl'ff in error.

[Endorsed:] In Supreme Court of United States. Ebenezer B. Convers, plaintiff in error, *v.* The Atchison, Topeka and Santa Fé Railroad Company in Chicago, defendant in error. Transcript of record, etc.

Endorsed on cover: N. Illinois C. C. U. S. No. 502. Ebenezer B. Convers, plaintiff in error, *vs.* The Atchison, Topeka & Santa Fé Railroad Company in Chicago. Filed October 4, 1888.

DEC 2 1891
JAMES H. McKENNEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1891.

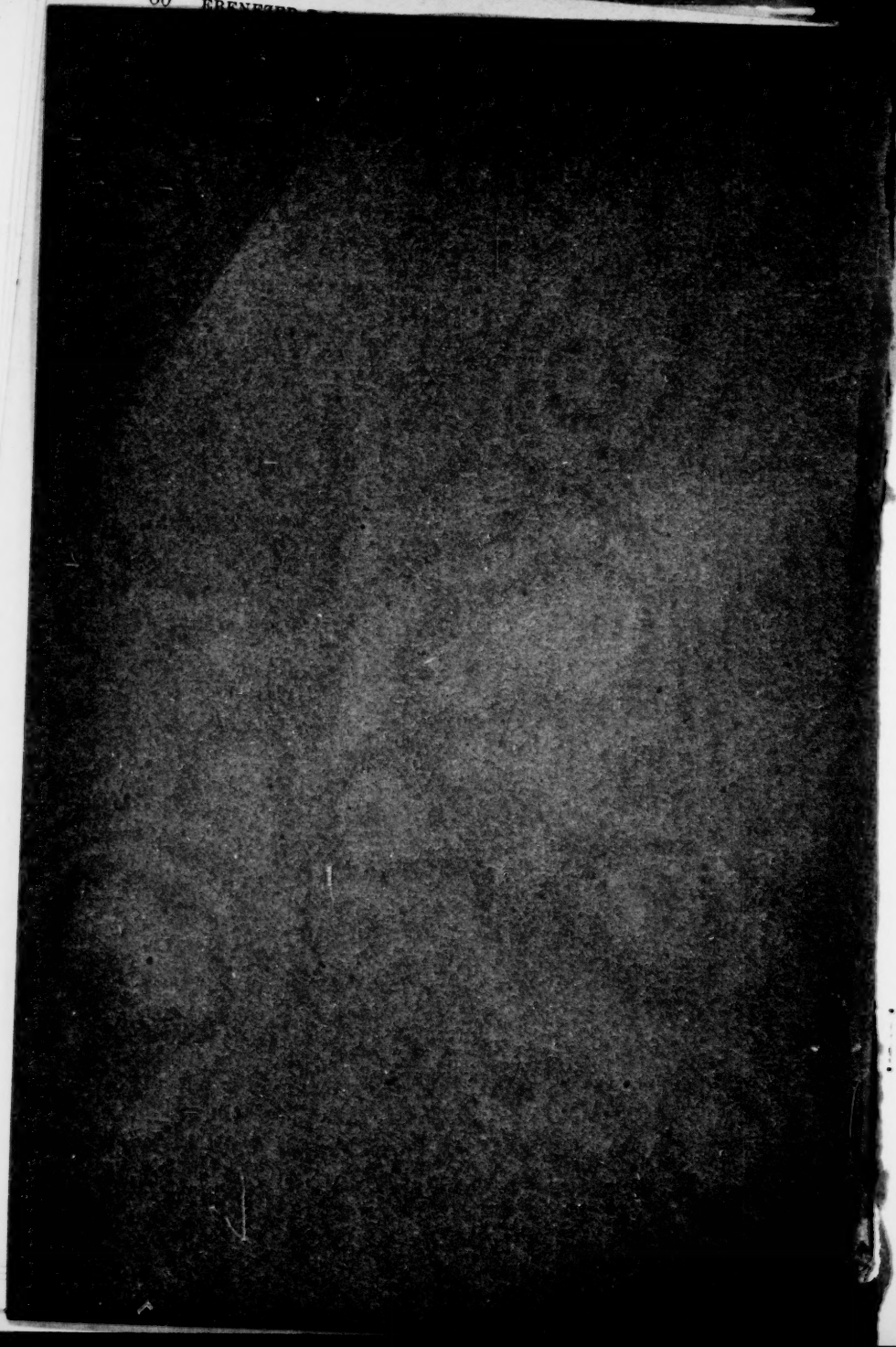
No. 154.

EBENEZER B. CONVERS,
Plaintiff in Error,
vs.
THE ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY IN CHICAGO,
Defendant in Error.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

CHARLES M. STURGES,
ATTORNEY FOR PLAINTIFF IN ERROR.



IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1891.

No. 154.

EBENEZER B. CONVERS,
Plaintiff in Error,
vs.
THE ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY IN CHICAGO,
Defendant in Error.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

STATEMENT OF THE CASE.

The Bill of Rights in the constitution of Illinois (Const. of 1870, Art. 2, Sec. 13) declares:

"Private property shall not be taken or damaged for public "use without just compensation. Such compensation, when "not made by the State, *shall be ascertained by a jury*, as shall "be prescribed by law."

The Eminent Domain act of Illinois (Rev. Stat. Ills., Ch. 47), enacted under this constitutional provision, directs:

Sec. 1: That just compensation for private property taken or damaged for public use, shall be ascertained by a jury "as "hereinafter prescribed."

Sec. 2: That (where such compensation cannot be agreed upon by the parties interested, or where the owner is incapable of consent, unknown, or a non-resident, etc.), the party authorized to take or damage the property may apply to the judge of the Circuit or County Court, where the property is situate, by filing with the clerk a petition setting forth (among other details), "the purpose for which said property is sought "to be taken or damaged, a description of the property, the "names of all persons interested therein as owners or other- "wise, as appearing of record, if known, or if not known "stating that fact, and praying such judge to cause the com- "pensation to be paid to the owner to be assessed."

Secs. 3 and 4: (Provide for summons and notice to the parties defendant.)

Sec. 5: "Any number of separate parcels of property "situate in the same county, may be included in one petition, "and the compensation for each shall be assessed separately, "by the same or different juries, as the court or judge shall "direct." Provides, also, for date of trial, amendments and new parties.

Secs. 6 and 7: (Provide for the selection and challenge of jurors.)

Sec. 8: That this oath shall be administered to the jury: "You and each of you do solemnly swear that you will well "and truly ascertain and report just compensation to the "owner (*and each owner*) of the property which it is sought "to take or damage in this case, *and to each person therein in- "terested*, according to the facts in the case, as the same may "be made to appear by the evidence, and that you will truly "report such compensation so ascertained: so help you God."

Sec. 9: That the jury shall, at request of either party, go upon the land in question and examine same in person, and

shall, "after hearing the proof offered, make their report in "writing, and the same shall be subject to amendment *by the "jury*, under the direction of the court or the judge, as the "case may be, *so as to clearly set forth and show the compensa- "tion ascertained to each person thereto entitled*, and the said "verdict shall thereupon be recorded." Provides, also, that benefits shall not be set off against or deducted from compensation.

Sec. 10: That "the judge or court shall, *upon such report*, "proceed to adjudge and make such order as to right and jus- "tice shall appertain, ordering that petitioner enter upon such "property and the use of the same, upon payment of full "compensation, *as ascertained as aforesaid;* and such order, "with evidence of such payment, shall constitute complete "justification of the taking of such property."

Sec. 11: That one not made a party may become such, by filing his cross-petition, etc., and that his rights "shall there- "upon be fully considered and determined."

Secs. 12 and 13. (Provide for appeals.)

Sec. 14. "Payment of compensation adjudged may, in all "cases, be made to the county treasurer, who shall, *on de- "mand*, pay the same *to the party thereto entitled*, taking re- "ceipt therefor, or payment may be made *to the party entitled*, "his, her, or their conservator or guardian."

Sec. 15. That the verdict of the jury and the judgment of the court shall be entered upon the records of said court.

Sec. 16. (Repeals former laws, etc.)

Under these provisions of organic and statutory law, the Railroad Company, defendant in error, in June, 1887, filed *two* several petitions in the County Court of Cook County, Illinois, for the ascertainment of compensation for real estate proposed to be taken by it for its corporate purposes.

PROCEEDINGS IN THE FIRST SUIT, CALLED FOR CONVENIENCE THE "GRANNIS" SUIT.

The petition in this suit, filed June 7, 1887 (Printed Rec., 2, *et seq.*), was originally brought against William C. D. Grannis, and fourteen other parties defendant, as owners of, or interested in, the tract of land sought in that suit to be taken, being a large body of land described as that part of the E. ½ of Sec. 30, T. 39 N., R. 14 E. of 3d P. M., lying between the West Fork of the South Branch of the Chicago River and the Illinois and Michigan Canal; (which tract is indicated on the right-hand side of the plat, preserved by the bill of exceptions, shown at p. 49 of Printed Record).

June 15, 1887, four new defendants (*Roberts et al.*) claiming a portion of the tract only were, on their own motion, made parties in the State court (Printed Rec., p. 4); and subsequently, by leave of that court granted July 28, 1887, the petitioner (defendant in error) amended its said petition, by making forty other persons (including Convers, the plaintiff in error), parties defendant, as owners of, or interested in, said tract (Printed Rec., p 8); and still later, by order of that court of Sept. 19, 1887 (Printed Rec., p. 23), five other persons were, on their own motion, made parties defendant—*Joyce et al.*—who (Printed Rec., p. 21) claimed portions only of the large tract.

Sept. 10, 1887, Convers, the plaintiff in error, appeared in the cause, and under the Illinois practice in such cases, filed his cross-petition (Printed Rec., p. 14), setting up that he was solely seized and the owner of a small part only (denoted by the triangle A shown on the right-hand side of said plat), of the large tract, and disclaiming any interest or title in the remainder of said large tract; and set up his claim for damages to his tract CCC (in the same manner as below more fully stated in the case of the second or "Tully" suit), and prayed a *separate* trial and assessment in the matter of his

compensation and damages. [A correction in this cross-petition by an amendment after the removal to the Federal court (Printed Rec., p. 25), in no particular changed its original essential scope.]

Sept. 12, 1887, said Convers, as a citizen of New Jersey, filed in said State court his petition and bond (under act of Congress of March 3, 1887), for a removal of his *separate controversy* in said suit, from said State Court into the Circuit court of the United States for the Northern District of Illinois. (Printed Rec., p. 17, *et seq.*)

Sept. 19, 1887, the State court accepted said petition and bond "for the removal of the suit and controversy in the above "entitled cause *between said railroad company and said Convers* "to the Circuit court of the United States for the Northern "District of Illinois," etc., and ordered "said removal to be "made pursuant to the prayer of said petition." (Printed Rec., p. 23.)

Oct. 3, 1887, the removed record was (Printed Rec., p. 1) filed in the Federal court: there being thus in the cause, at the date of the removal order by the State court (Sep. 19, 1887,) besides Convers, *fifty-nine* other defendants, all of whom remained in the State court for the adjudication *there* of their respective controversies in the original cause.

PROCEEDINGS IN THE SECOND SUIT, CALLED FOR CONVENIENCE THE "TULLY" SUIT.

The defendant in error, June 10, 1887, filed its *second* petition (Printed Rec., p. 27) in the same County court, against Thomas Tully, and some twenty-six other defendants, as owners of, or interested in sundry other parcels of land described in *that* petition, and sought to be taken for the railroad purposes of the petitioner. *Among* these parcels of land was a strip of land one hundred feet wide, lying partly in section *30*

and partly in section 31. In this second suit, Convers and two other persons were made parties defendant, as owners of or interested in *this* strip. So much of this strip as lies in section 30 is denoted in said plat (Printed Rec., p. 49) by the tract BBB, lying between the levee of the Illinois & Michigal Canal, and the slips and docks to the northward shown by that plat.

Sept. 10, 1887, Convers filed his cross-petition and claim (Printed Rec. 36) in this second suit. He thereby (Paragraph 3) averred his sole seizin in fee of the strip BBB (described as the "South Tract" in this cross-petition); *disclaimed* any interest in any other part of the original larger strip of which the Railroad company, in its petition, had alleged him [with two others] to be an owner, etc; by Paragraph 2, in connection with the remainder of the cross-petition, set up his sole ownership in fee of the tract CCC shown on the plat, with its water front and docks on the Chicago River (described as the "North Tract" in this cross-petition); set out and insisted on his right to compensation not only for his tract BBB, proposed to be absolutely taken, but also for the damages to his tract CCC and its docks, etc., which would be deprived, by the proposed condemnation, from their access to and connection with the Illinois & Michigan Canal, etc; and prayed a *separate* trial and assessment in the matter of his compensation and damages.

Sept. 12, 1887, said Convers, as a citizen of New Jersey, filed in said State Court his petition and bond (Printed Rec. p. 39 *et seq.*) under the act of Congress aforesaid, for removal of his *separate controversy*, in this second suit, from said State Court to said Federal Court.

Sept. 19, 1887, said County Court accepted said petition and bond, and ordered the removal of "the suit and contro-"versy in the above entitled cause *between said railroad com-*

"*pany and said Convers*," into said Federal Court pursuant to the prayer of said petition. (Printed Rec. p. 42.)

Oct. 3, 1887, the removed record in this second suit was duly filed in the Federal Court (Printed Rec. p. 26); all of the defendants in this second suit, except Convers, remaining in the State court for the adjudication *there* of their respective controversies in the original cause.

The original petitition of the Railroad company, defendant in error, in *both* suits ("Grannis" suit, Printed Rec., p. 3; "Tully" suit, Printed Rec., p. 29), prayed "that the com-"pensation to be paid to the *several* owners of and persons "interested in said lands and property on account of the ap-"propriation thereof by your petitioners for its railroad pur-"poses aforesaid, may be *ascertained*," etc.

PROCEEDINGS IN THE FEDERAL COURT, AFTER REMOVAL.

It appears from the bill of exceptions (Printed Rec., p. 49), in connection with the original petitions of the Railroad Company, and the cross petitions of Convers already referred to, that the land involved in the controversy of Convers in the "Grannis" suit, was that small portion of the whole tract described in the original petition filed in the State court in that suit, indicated on the plat by the triangle A; and that the land involved in his controversy in the "Tully" suit, was that smaller part of the land described in the Railroad company's original petition in that suit in said State court, indicated on the same plat by the strip BBB.

It further also appears, in like manner, that in each of the suits in the State court there was involved a *further* controversy between the Railroad Company and Convers, as to the damages and compensation demanded in those suits by the

latter, through his cross-petitions, as the sole owner of the tract CCC shown on the plat, with its water front and docks on the Chicago River, to be cut off, by the proposed condemnation, from access to and connection with the Illinois & Michigan Canal.

The grounds of Convers' demand for compensation and damages in respect of all of these controversies, were fully set forth in said cross-petitions; and are indicated by the nature of the proofs of both parties on the trial, preserved by paragraphs 1 to 8 of the bill of exceptions. (Printed Rec., p. 48 *et seq.*)

On the removal to the Federal court said controversies between Convers and the Railroad Company in both suits taken together, therefore, involved the question of Convers' compensation for the actual taking of the triangle A, and of the strip BBB, together forming a connected parcel of land (embracing three acres, as stipulated on the trial; Printed Rec., p. 49); with the further question of his damages and compensation as the owner of the tract and docks or slips C C C, shown on the plat; which tract CCC, including the slips, embraced forty acres, as stipulated on the trial. (Printed Rec., p. 49 *et seq.*)

The Federal court, upon the stipulation of Convers and the Railroad Company (Printed Rec., p. 44), consolidated the two causes, and proceeded with a jury to their trial as one cause.

No parties at any time appeared in the Federal court in said causes, or participated in the trial, or in any of the proceedings in that court, except Convers and the Railroad Company. See paragraph 19 of Bill of Exceptions. (Printed Rec., p. 56.)

On the trial said tracts A, BBB, and CCC were, by evidence and stipulation on the part of Convers and the Railroad Company, identified in location and area. (Paragraphs 2, 3, 4 and 5 of Bill of Exceptions; Printed Rec., p. 49.)

On the trial the Railroad Company, to maintain the issues on

its part, introduced evidence as to the market value at the date of the filing of the original petitions, of the tracts A and BBB, and as to the effect of taking these tracts for railway purposes upon the value of the tract CCC; but did not introduce "any evidence "tending to show the quality or extent of the ownership or "interest of said Convers at any time in said tracts, * or either of them, or that said ownership or interest were or were not "absolute, exclusive, or unencumbered:" and rested its case. (Paragraph 6, Bill of Exceptions; Printed Rec., p. 50.)

Thereupon Convers, to maintain the issues on his part, introduced evidence as to said market value of said tracts proposed to be taken, and as to the damage which would result by such taking, to the tract CCC; in which evidence introduced by Convers "there was evidence tending incidentally "to show that at the date of the filing of said original petitions "of said Railroad company he was, by his agents, in the pro- "cess of constructing two slips or docks on said tract marked "C (in said plat), and that tenants claiming under him were "then in occupancy of said tracts marked A and B (in said "plat); but said Convers on said trial introduced no direct or "other evidence tending to prove the quality, nature, extent, "or exclusiveness of his interest, title, ownership, or estate, "or the title papers or muniments by which he claimed or "held the same, or that any his interest, title, ownership, or "estate in said premises were not in whole or in part subject "to liens, adverse claims, or titles held by or vested in other "persons;" and thereupon said Convers rested his case. (Paragraph 7 of Bill of Exceptions; Printed Rec., p. 50.)

The Railroad company introduced no evidence in rebuttal; and the foregoing embraced all the proofs and evidence introduced or heard on the trial; with the exception of a view of the premises had by the jury. (Paragraph 8 of Bill of Exceptions; Printed Rec., p. 51.)

After the conclusion of the arguments of counsel to the jury, "said Railroad company, by its counsel, tendered to the court "a form to be followed by the jury in finding and making its "verdict and report, and prayed the court to charge the jury "that said form embraced and indicated the true issues in said "consolidated causes, to be found and passed on by said jury, "and to further charge said jury to follow and be governed "by said form in that behalf, except in the particulars in "respect whereof blanks to be filled by said jury were left in "said form." (Paragraph 9 of Bill of Exceptions; Printed Rec., p. 51.)

The form of verdict, so tendered, (Printed Rec. p. 51 *et seq.*), declared:

That the jury "have well and truly ascertained the amount "of just compensation to be paid to the *several owners* of and "parties interested in the property sought to be taken."

That the petitioner take "from the *owners* and parties in-"terested therein the following described land and premises, "*parcel* of the land described in the petitions filed in these "causes, to wit:" (Here describing the tracts A and BBB "shown on said plat.)

"That the *owners and parties* interested therein are entitled "to the sum of (———) dollars, the value of the land taken, "and all improvements thereon, in full compensation for the "same."

"That the *owners of*" (here describing the tract CCC shown on said plat,) "are (———) entitled to (———) com-"pensation for damages thereto by reason of the taking and "use of the property above described."

On such tendering of said form of verdict, to be charged to the jury, said Convers objected thereto and to the granting of the prayer of the Railroad Company that it be so charged, for

the reasons following. Paragraph 10 of Bill of Exceptions; Printed Rec., p. 52):

"Because it was not competent or lawful for said jury in "said consolidated causes to ascertain the compensation of any "person other than said Convers; and because it was not com- "petent or lawful for said court or jury in said causes to take "or condemn any right, title, or interest in said land except "that of the said Convers; and because the ascertainment and "determination of the compensation to any owners or persons "interested in said land other than said Convers, if any such "there were, remained with those persons in the County court "of Cook county aforesaid for adjudication, and could not "lawfully be included or confused with the compensation and "separate controversy of said Convers at issue in said Circuit "court of the United States; and because said Convers was, "in said Circuit court, on the trial of said consolidated causes, "entitled to have said jury find and ascertain his separate "compensation disconnected with that of any other person or "persons; and because the burden of proof was on said Rail- "road Company in the first instance on said trial as to certainty "in respect to the ownership or interest of said Convers in "said premises, and in respect of the *quantum* or quality of "such ownership or interest."

On the tendering of said form of verdict to be charged to the jury, said Convers, in further opposition thereto, prayed the court (Paragraph 10, of Bill of Exceptions; Printed Rec., pp. 52, 53):

"To change and modify said form by restricting the same "so that it should respond to and speak in respect of the "ownership and compensation of said Convers alone, or so "that it should fit a finding by the jury of his separate com- "pensation in the premises, and to charge said modified or re-

"stricted form to the jury in place of the form so as aforesaid "tendered by said railroad company; and in that behalf said "Convers, by his counsel, insisted that he, said Convers, was "in said Circuit Court, on said trial of said consolidated "causes, entitled to have his separate just compensation, in "the premises found and ascertained by said jury without the "same being blended and confused with the compensation of "other persons not before said Circuit Court, and that he was "in like manner entitled to have his separate controversy in "said consolidated causes passed upon and determined by said "jury, by itself, and without its being intermingled with the "controversies or rights of such other persons."

The learned trial judge refused and overruled said prayer and objections of said Convers, and granted said prayer of the defendant in error, and charged and instructed said jury (Paragraph 11, of Bill of Exceptions; Printed Rec., p. 53):

"That it (the jury) should make and find its verdict and re- "port in compliance with the said form tendered by said rail- "road company, and that said form last named embraced and "responded to the true issues before the court and jury in said "consolidated causes, which issues were the ascertainment of "the entire value of said tracts, marked A and B, in said dia- "gram, and the entire damage, if any, to said tract marked "C, on said diagram, *without regard to what persons (said "Convers or otherwise), owned, or were interested in said "tracts respectively, and without regard to what the owner- "ship or interest, if any, of said Convers was in "said tracts, or either of them*, and in overruling "said prayers and objections of said Convers, "the court ruled and stated in the presence of said jury that "no adequate proofs of the title of said Convers in the prem- "ises were before the court and jury, and that the question of "what portion or separate share in said entire compensation or

"damage, if any, said Convers was entitled to *was not a ques-*
"*tion for the jury herein*, and that that question would come
"up to be settled on an application to *the court* to distribute
"such entire compensation or damages as should be found
"by the jury, on which application all persons, whether said
"Convers or others, owning or having interests in said tracts
"of land would have to show up their titles and interests be-
"fore the court, to the end that such entire fund representing
"the land should then be distributed by the court proportion-
"ately to such ownerships and interests then shown, and the
"court then and there refused to modify or restrict said form
"of verdict and report in any manner as so prayed by said
"Convers, *and likewise refused to submit said separate compen-*
"*sation, damages or controversy of said Convers to the consid-*
"*eration or finding of said jury.*"

To each of which rulings and charges of the court, and to said several refusals of the court, said Convers, when and as they were respectively made, then and there, by his counsel excepted. (Paragraph 11 of Bill of Exceptions; Printed Rec., p. 53.)

The jury, using the form of verdict so charged to them by the court, returned said form into court as their verdict, filling said blanks therein so that it was found by them, "that the "*owners and parties interested* therein (the tracts A and B B "B shown in the plat), are entitled to the sum of twelve thou-"sand dollars," and that "*the owners*" of the tract C CC were not entitled to compensation for damages thereto. (Printed Rec., p. 46; see also Paragraph 12 of Bill of Exceptions, Printed Rec., p. 53.) No amendment of the verdict was made by court or jury; and the jury was discharged.

Motions to quash and set aside this verdict, and for a new trial, (Printed Rec., p. 54 *et seq.*), and in arrest of judgment (Printed Rec., p. 55 *et seq.*), were made on the part of Con-

vers, both based on the refusal of the court to charge in respect of, and on the failure of the jury to find upon, his separate controversy and compensation, and also on the want of jurisdiction in the court to proceed as it had done; both of which motions were overruled by the court.

Final judgment was entered on the verdict, March 27, 1888. (Printed Rec., p. 47.)

This judgment finds (Printed Rec., p. 48), after describing the tracts A and B B B shown on said plat, that the sum of money awarded by the jury "to the *owners* and *parties* interested in the premises above described is a just compensation for the taking of said premises for the railroad purposes of the petitioner herein, and for all damages to property not taken," and ordered "that the petitioner pay to the county treasurer of Cook County, Illinois, for the benefit of the *owners and parties interested in* the premises above described, the sum of twelve thousand dollars ($12,000), being the amount awarded by said jury in and by their said verdict"; and directed that, on such payment to said county treasurer, the Railroad Company might enter upon the premises described and the use thereof for railroad purposes.

This final judgment makes no mention of Convers' individual right, or of his separate controversy removed into the Federal Court, or of his individual interest in the adjudication had upon such removal; and in no particular responds to his individual claim or right to compensation; nor did said final judgment even speak his name, except that it appears in the formal title to the cause preceding the judgment order.

ASSIGNMENT OF ERRORS. (*Printed Rec., p. 59.*)

I.

The Circuit court erred in its charge to the jury, and in overruling the objections and prayers of said plaintiff in error in respect of said charge, as the same are respectively set forth in the bill of exceptions in said record.

Specifications.

1. In charging the jury that the form of verdict tendered by the Railroad company (abstracted on p. 10 ante, and set out in full in Printed Rec., p. 51 *et seq.*), "embraced and responded to the true issues before the court and jury in said "consolidated causes, which issues were the ascertainment of "the entire value of said tracts marked A and B in said diagram, and the entire damage, if any, to said tract marked C "on said diagram, *without regard to what persons (said Convers or otherwise), owned or were interested in said tracts respectively, and without regard to what the ownrship or interest, if any, of said Convers was in said tracts, or either of them.* (Paragraph 11 of Bill of Exceptions; Printed Rec., p. 53.)

2. In charging and instructing the jury "that it should "make and find its verdict and report in compliance with the "said form tendered by said Railroad company." (Paragraph 11 of Bill of Exceptions; Printed Rec., p. 53.)

3. In ruling and stating in the presence of the jury upon the issues and evidence in said cause, "that no adequate proofs "of the title of said Convers in the premises were before the "court or jury, and that the question of what portion or separate share in said entire compensation or damage, if any, *said "Convers* was entitled to, *was not a question for the jury here-"in*, and that that question would come up to be settled on an "application to the court to distribute such entire compensation

"or damages as should be found by the jury, on which appli-"cation all persons, whether said Convers, or others, owning "or having interests in said tracts of land would have to show "up their titles and interests before the court, to the end that "such entire fund representing the land should then be dis-"tributed by the court proportionately to such ownerships and "interests then shown." (Paragraph 11 of Bill of Exceptions; Printed Rec., p. 53.)

4. In overruling the several following objections of said Convers, made to the court against said form of verdict before the same was charged by the court to the jury. (Paragraph 10 of Bill of Exceptions; Printed Rec., p. 52), viz:

a. His objection, that "it was not competent or lawful for "said court or jury in said (consolidated) causes to ascertain "the compensation of any person other than said Convers"; "nor to take or condemn any right, title or interest in said "land except that of the said Convers."

b. His objection, that "the ascertainment and determination "of the compensation to any owners or persons interested in "said land other than said Convers, if any such there were, "remained with those persons in the County Court of Cook "County aforesaid, for adjudication, and could not lawfully be "included or confused with the compensation and separate "controversy of said Convers at issue in said Circuit Court of "the United States."

c. His objection, that "said Convers was, in said Circuit "Court, on the trial of said consolidated causes, entitled to "have said jury find and ascertain *his* separate compensation "disconnected with that of any other person or persons."

d. His objection, that the "burden of proof was on said "railroad company in the first instance on said trial in respect "of the ownership or interest of said Convers in said premises, "and in respect of the *quantum* or quality of such ownership

"or interest;" that objection being to the point that the burden was on the Railroad Company to raise seasonable issues as to such ownership if it intended or desired to put it in question.

II.

The Circuit Court erred in refusing to charge the jury as prayed by said plaintiff in error, as set forth in said bill of exceptions.

Specification.

1. In refusing the prayers of said Convers (Paragraph 10 of Bill of Exceptions; Printed Rec., p. 52) viz:

That the court should change and modify the form of verdict tendered, on the part of the Railroad Company, to be charged to the jury, "by restricting the same so that it should "respond to and speak in respect of the ownership and com- "pensation of said Convers alone, or so that it should fit a "finding by the jury of his separate compensation in the "premises;" and that the court should "charge said modified "or restricted form to the jury in place of the form" of the verdict so tendered by said Railroad Company.

III.

The Circuit Court erred in refusing to submit to the jury the separate controversy of said plaintiff in error, of which controversy alone said Circuit Court had jurisdiction.

Specification.

Paragraph 11 of the Bill of Exceptions shows (Printed Rec., p. 53) that "the court then and there refused to modify "or restrict said form of verdict and report in any manner as "so prayed by said Convers, and likewise refused to submit "said separate compensation, damages or controversy of said "Convers to the consideration or finding of said jury."

IV.

The Circuit Court had no jurisdiction of the issues which it did submit to the jury.

V.

The Circuit Court in said proceedings and judgment unlawfully blended and confused the separate controversy of the plaintiff in error with the controversies of other persons, strangers in said Circuit Court, over whom it had no jurisdiction, and whose rights remained for adjudication in the County Court of Cook County, in the State of Illinois, where they were left upon the removal by said plaintiff in error of his separate controversy to said Circuit Court.

VI.

Said judgment and proceedings are irresponsive to said separate controversy of said plaintiff in error.

VII.

Said Circuit Court had no jurisdiction to entertain said proceedings and to render said judgment in manner and form as shown by said record.

POINTS, AUTHORITIES AND ARGUMENT.

I.

PROCEEDINGS UNDER REV. STAT. ILL., CH. 47; EMINENT DOMAIN, DIVEST THE TITLE ONLY OF THE OWNER OR PARTY IN INTEREST BROUGHT BEFORE THE COURT *in personam*. THEY CANNOT AVAIL *in rem* BEYOND SUCH TITLE.

Rev. Stat. Ill., Ch. 47; Secs. 2, 3, 4, 5, 11.

Bowman v. *Venice, etc., Ry. Co.*, 102 Ill., 459.

Johnson v. *Freeport, etc., Ry. Co.*, 116 Ill., 521, 525.

See, also, *Chicago, etc., R. R. Co.* v. *Smith*, 78 Ill., 96.

II.

SUCH PROCEEDINGS ARE *stricti juris*.

The person proceeded against is entitled to every right and privilege prescribed by the law. Any material departure therefrom, or denial of any statutory right, is fatal to the proceedings. The record must affirmatively show compliance with the statute.

Chicago, etc., Ry. Co. v. *Galt*, 133 Ill., 657.

Reed v. *Ohio, etc., Ry. Co.*, 126 Ill., 48.

Hyslop v. *Finch*, 99 Ill., 171.

Chicago, etc., R. R. Co. v. *Smith*, 78 Ill., 96.

Kankakee, etc., R. R. Co. v. *Straut*, 102 Ill., 666.

III.

IN SUCH PROCEEDINGS THE COMPENSATION MUST "BE ASCERTAINED *by a jury*."

Const. of 1870, Art. 2, Sec. 13.
People v. *McRoberts*, 62 Ill., 38.
Kine v. *Defenbaugh*, 64 Ill., 291.
Hyslop v. *Finch*, 99 Ill., 171.

Under the preceding constitution (of 1848) the proceeding might be practically *in rem*, and there was no necessary notice or privilege of a jury. *Johnson* v. *Joliet, etc., R. R. Co.*, 23 Ill., 202: The frauds and abuses which prevailed under this former situation of things were pointed out in the convention which framed the Constitution of 1870. 2 Debates of Ill. Const. Conven. 1870, pp. 1,575 to 1,578. See Speeches of Mr. Springer, *Id.* p. 1,575: of Mr. Wheaton, *Id.* p. 1,576: and of Mr. Underwood, *Id.* p. 1,576. The provisions of the new constitution, with those of the existing statute enacted thereunder, were designed *ex industria* to remedy those frauds and abuses.

The theory is, under the statute, inadmissible, that the jury may, against the objection of an owner or party in interest, find an entire compensation for the land as a whole, leaving this compensation for subsequent distribution and apportionment by the court. The statute contemplates and provides that *each* owner and person in interest may have his separate compensation ascertained *by the jury*, without its confusion or admixture with the compensation of any other owner or person in interest.

By Sec. 2, the jurisdiction to proceed under the statute depends on the inability of the petitioner to agree on compensation. *Reed* v. *Ohio, etc., Ry. Co.*, 126 Ill., 48. No owner or

person in interest can be proceeded against, under the statute, with whom agreement for compensation can be made, for in such case the jurisdictional fact does not exist. *Reed* v. *Ohio, etc., Ry. Co., supra.* Several parties in interest in the same tract stand on an independent footing in respect of their right to agree for compensation. Compensation may be agreed upon by one tenant in common for his interest, and the case proceed to trial against another tenant in common with whom such agreement cannot be made. *Bowman* v. *Venice, etc., Ry. Co.*, 102 Ill., 459, 466.

By Sec. 14, the compensation allowed to be paid to the county treasurer is, by necessary construction, the compensation already found and ascertained to some party or parties to the proceedings "thereto entitled" by the terms of the adjudication under which it is so paid. This section contemplates the compensation to be so paid to the county treasurer, as a compensation made certain not only in respect its amount, but also in respect of the identity of the person or persons to whom it has been awarded, by the verdict of the jury and the judgment of the court lawfully proceeding under the prior sections of the act.

By Sec. 8, the jury is to ascertain the just compensation for the property to "*each* owner," and to "*each* person therein interested."

By Sec. 9, the verdict of the jury must "clearly set forth "and show the compensation ascertained to *each* person thereto "entitled."

Unless the compensation be so ascertained and adjudged in respect of the identity of the person to whom it belongs, how shall the county treasurer under Sec. 14 "on demand, pay the "same to the party thereto entitled, taking receipt therefor?" That functionary is not a judicial officer vested with a dis-

cretion to hear and determine unknown rights to the fund committed to his custody. The litigation involving the rights of "each owner" to compensation, is contemplated as fully closed when the fund comes to his hand. The law makes him the depositary, *after* that litigation, of the fund or funds supposed to have been ascertained under the law therein, and therein to have been stamped with a right so defined and established, that he may recognize and honor it "on demand."

It is the clear and necessary intention of the statute, as a whole, that no owner shall be compelled to part with the possession of his land without a compensation ascertained to *him* which he may at once possess and enjoy in its place. The statutory exception where the railroad company [under sec. 13] may be let into possession, on bond, pending an appeal, affirms the rule.

It is to be said, once for all, that what might be a necessary or allowable procedure under a petition against "unknown "owners," in no particular abridges the statutory rights of persons under no such disability, and whom the petitioner has identified in name as owners. Nor can the full statutory privileges of such known owners be cut down by the device of adding "unknown owners" as parties to the proceeding. *Chicago, etc., R. R. Co. v. Smith*, 78 Ill., 96. See remarks of the court on p. 99.

IV.

THE PRIVILEGE OF A *several* ASCERTAINMENT OF COMPENSATION IS THE WELL SETTLED RIGHT AND PRACTICE UNDER THE STATUTE, AND THE COURT COULD NOT LAWFULLY SO CHARGE THE JURY AS TO REFUSE IT TO CONVERS.

"In the proceedings under the Eminent Domain act, each "separate owner may have his damages assessed before a

"separate jury, and so is entitled to a separate appeal from "the judgment rendered on the verdict. Such is also the case "where different persons have several and distinct interests in "the same tract."

Johnson v. *Freeport, etc., Ry. Co.*, 116 Ill., 521, 525.

In *Bozeman* v. *Venice, etc., R'y. Co.*, 102 Ill., 459, the Court (p. 465):

"However many parties in interest, the amount each one is "entitled to receive as compensation must be assessed to each "separately, unless the parties in interest require it other-"wise"; and held, that the interest of *one* tenant in common was clearly within the statutory provision that the compensation of each owner should be *separately* ascertained; and that it was not requisite to this ascertainment that the *other* tenant or tenants in common should be before the court and jury.

Unless a separate ascertainment be waived, it is, under the statute and the settled practice thereon, the function of the jury to declare a compensation commensurate with the quality and extent of the respective and separate ownerships before it, whether the same be of the whole or of some partial interest in the land.

This is illustrated by the following cases where compensation was involved:

To the owner of a leasehold term to expire in less than a year. *Atchison, etc., R. R. Co.* v. *Schneider*, 127 Ill., 144.

To the owner of a leasehold term having two years to run; where, pending the proceedings, the railroad had purchased the reversion from the landlord. *Chicago, etc., R. R. Co.* v. *Dresel*, 110 Ill., 89.

To a lessee holding a term for five years. *Becker* v. *Chicago, etc., R. R. Co.*, 126 Ill., 436.

To landlord and tenant, severally. *Chicago, etc., R. R. Co.* v. *Catholic Bishop*, 119 Ill., 525.

To a remainderman. *Chicago, etc., R. R. Co.* v. *Goodwin*, 111 Ill., 273.

Separately to a tenant, where the landlord was a party. *Booker* v. *Venice, etc., Ry. Co.*, 101 Ill., 333.

To the owner of the paramount estate, where the railroad was already in possession under a license valid *pro tanto*. *Fisher* v. *Chicago, etc., R. R. Co.*, 104 Ill., 323.

To one (of several defendants) who had an interest in a privilege of entry and water power reserved by a prior grantor in the chain of title. *Galena, etc., R. R. Co.*, v. *Haslam*, 73 Ill., 494. Of this owner the court said (p. 496): "He had an "interest in the land sought to be taken that would be affected "by the construction of the railroad. The company could "not appropriate it to their own use *without ascertaining, in "the mode pointed out by the statute*, what damages, if any, "the owner would sustain."

It does not detract from this original right to a separate ascertainment of compensation, that it may be waived by the owner or owners, or lost by their failure to insist upon the same, or to object to an ascertainment in gross; nor that it does not lie with a railroad company, (endeavoring by proceedings in error to secure a new trial), to complain of an ascertainment in gross, the owners being satisfied with such an ascertainment.

V.

THE COURT SHOULD HAVE CHARGED TO THE JURY THE ASCERTAINMENT OF CONVERS' COMPENSATION AND DAMAGES AS THE OWNER IN FEE.

The petitions of the railroad company made Convers a party, as an owner of or interested in the larger tracts described in those petitions. In his cross-petitions Convers averred his sole seizin and ownership of specified smaller portions of those tracts and disclaimed as to the remainder. The trial was confined to the smaller portions. The Railroad company, neither in any of its proceedings prior to the trial, nor in its proofs in chief on the trial, made any question as to Convers' absolute ownership. Convers' proofs on the trial tended to show that, when the proceedings were begun he was in possession by his agents and tenants. No opposing proofs as to, or attacks on his title, were interposed by the railroad company in rebuttal. On these facts, and on the legal presumption arising therefrom, the court and jury were bound to ascertain his compensation as the owner in fee.

St. Louis, etc., Ry. Co. v. *Teters*, 68 Ill., 144.
Peoria, etc., Ry. Co. v. *Bryant*, 57 Ill., 473.
Chicago etc., R. R. Co. v. *Hopkins*, 90 Ill., 316.
Peoria, etc., R. R. Co. v. *Laurie*, 63 Ill., 264.
Mt. Sterling v. *Gizeus*, 17 Ill., 255.

These authorities also throw on the *petitioner* the burden to seasonably raise questions as to title.

In *Keith* v. *Keith*, 104 Ill., 397, the court said [p. 402]: "Prior possession alone is evidence of a fee, and although the "lowest, until rebutted by a higher it must prevail."

This doctrine has been *lex terræ* in Illinois from the begin-

ning. *Herbert* v. *Herbert*, Breese Rep., [Beecher's Ed.] 354.

In *Peoria, etc., R'y Co.* v. *Bryant*, 57 Ill., 473, where question was made as to the title of a defendant in a condemnation proceeding, the court said [p. 478]:

"There was proof before the jury that appellee was in "actual possession when the condemnation proceedings were "commenced. Such possession has always been held to afford "a presumption of ownership in fee."

In the like case of *St. Louis, etc. R'y Co.* v. *Teters*, 68 Ill., 144, the court said [p. 148]:

"Here we find appellee was in the full and uninterrupted "possession of the land, and the law, from that fact, presumes "he is the owner."

In *Mt. Sterling* v. *Givens*, 17 Ill., 255, there was a subtle attempt, (akin to that in the case at bar), by the form of an instruction to the jury at the close of a trial, to raise, in a proceeding for condemnation, title questions not previously disclosed. The attempt received no comfort at the hands of the court (see p. 257, *et seq.*); although at that time there was [under *Sangamon Co.* v. *Brown*, 13 Ill., 207] a different rule as to the burden of proof in such cases in respect of title, from that prevailing now, and stated in *St. Louis, etc. R'y Co.* v. *Teters*, 68 Ill., 149, and in *Peoria, etc., R'y Co.* v. *Bryant*, 57 Ill., 473.

Improvements on or acts of ~~domain~~ dominion over land tend to prove possession. *Hubbard* v. *Kiddo*, 87 Ill., 578; *Ellicott* v. *Pearl*, 10 Pet., 412, 442. Occupancy by a tenant is the possession of the landlord. *Walters* v. *The People*, 21 Ill., 178.

VI.

IT WAS BEYOND THE FEDERAL JURISDICTION OF THE COURT AND JURY TO ATTEMPT TO ASCERTAIN THE COMPENSATION OF ANY PERSON EXCEPT CONVERS. THE ISSUES CHARGED BY THE COURT TO THE JURY, ITS FINDINGS THEREON, AND THE JUDGMENT OF THE COURT THEREON, WERE ALL ERRONEOUS IN THAT THEY TRANSCENDED THAT JURISDICTION.

Convers was the only party over whom the Federal court had jurisdiction upon the removal. His separate interest and controversy were alone there subject to cognizance.

1. Because, upon the record, the ascertainment of *his* separate compensation and damages was the only subject-matter removed, or removable, into that court.

Removal Act of March 3, 1887, 24 U. S. Stat. at Large, 552.

2. Because, if the controversy to be tried by the Federal court upon the removal, was *not* wholly between the railroad company and Convers; but was (or might be) a controversy between the railroad company and Convers, *together with* some other person or persons, then neither the names nor citizenship of such others are found in the record to support the jurisdiction or adjudication of that court on that controversy.

Robertson v. *Cease*, 97 U. S., 646.
Stevens v. *Nichols*, 130 U. S., 230.
Continental, etc., Co. v. *Rhoads*, 119 U. S., 237.
Smith v. *Lyon*, 133 U. S., 315.

Conceding, for the argument, that there were owners in the land other than Convers, their rights will be presumed beyond the jurisdiction of the Circuit court, unless the contrary affirmatively appears upon the record. *Robertson* v. *Cease*, 97 U. S., 646.

The *possibility*, on the record, of a disqualifying citizenship, is as fatal to the jurisdiction as if the disqualification specifically appears. *Jackson* v. *Allen*, 132 U. S., 27. *Robertson* v. *Cease*, 97 U. S., 646.

If the judge below conceived that the controversy necessarily involved parties other than Convers, whose citizenship was undetermined, or that their rights must be adjudicated on in the case, the law of his legal being gave him no judicial breath beyond that to remand the causes to the State court from whence they came. *Graves* v. *Corbin*, 132 U. S., 571; *Stevens* v. *Nichols*, 130 U. S., 230; *Morris* v. *Gilmer*, 129 U. S., 315.

The controversy which the learned judge below saw fit to charge to the jury was *not* the controversy of the Railroad company against Convers; but it was the controversy of the Railroad company against unknown owners. But jurisdictional citizenship cannot be predicated of "unknown owners." *Mansfield, etc., R'y Co.* v. *Swan*, 111 U. S., 379, 381.

Nor did the court or jury below speak in any defined or severable way of the compensation of Convers *alone*, so that, on the record, an adjudication on *that* compensation can be found to be supported *pro tanto*.

The practice of railroads seeking, under the Eminent Domain law of Illinois, expeditiously to secure or condemn real estate thought desirable for their corporate purposes, is well understood by those conversant with legal and corporation procedure in that state.

Large tracts of land, embracing smaller tracts in which there are, or may be, differing or independent ownerships, are frequently, through haste or for convenience, included in one description and petition. All persons who may appear of record to have any title or interest in any part of the whole, are

made parties defendant in gross, and are summoned in the proceeding.

Thereupon parties appear; allege their particular rights and interests in the whole or in special parts of the tract; disclaim as to others; and set up their specific demands for damages. In the interval between these steps and the date of the trials under the petition, there ensues a period of negotiation, of adjustment and settlement with this and that defendant, or of the final development of irreconcilable differences which must go before a jury. In this period there is activity on both sides to attain such settlements, if practicable. It is commonly the result that, little by little, the field for final dispute is, by the elimination therefrom, through such settlements, of parts of the original tract, and of portions of the original defendants, so narrowed that there remains for final trial, but a small residue of the various possible controversies with which the petition was freighted when it began its voyage.

Although the causes at bar were removed from the State court at too early a stage to show the full course of this usual programme in such cases, yet it will be found measurably illustrated up to that point, in the appearance there of sundry parties (Roberts *et al.*, Printed Rec., p. 5; Joyce *et al.*, Printed Rec., p. 21) claiming title to special parts only of the whole tract embraced in the proceeding; as well as by the cross-petitions and disclaimers of Convers himself.

Illustrations of a like character may be found in *Chicago, etc., R. R. Co.*, v. *Dresel*, 110 Ill., 89 (where pending the suit a settlement was made with the landlord, but the cause remained for the ascertainment of the compensation of the tenant); in *Galena, etc., R. R. Co.* v. *Haslam*, 73 Ill., 494, 495 (where Burton and wife disclaimed as to a tract wherein the petition averred their interest, but set up an interest in another tract); and in *Johnson* v. *Freeport, etc., Ry. Co.* 111 Ill., 413 (where the well

settled practice, giving the right to a defendant to bring forward claims for special damages by cross-petition, or thereby accurately to describe or limit *his* interest before the court, is defined and declared).

Under a like procedure to that above outlined Convers was, prior to the removal of his controversy to the Federal court, one of some sixty defendants in the State court, alleged to be owners of or interested in the large tract described in the original petition in the "Grannis" suit (Printed Rec. p. 2); and one of three defendants alleged to be owners of or interested in a particular strip of land, in sections 31 and 30, described in the original petition in the "Tully" suit (Printed Rec. p. 27, 28).

Thus made a party, Convers appeared in the State court, and filed his cross-petition in each suit.

By paragraph 2 of his original cross-petition (Printed Rec., p. 14) and by the same paragraph of his amended cross-petition (Printed Rec., p. 25) in the "Grannis" suit, he averred his *sole seizin and ownership*, when the proceeding began, of a small described *portion only* (the triangle A in the plat or diagram preserved by the bill of exceptions; Printed Rec., p. 49) of the large tract involved in that suit; and by paragraph 3 of said cross-petition, he disclaimed "any title, interest or "ownership in" the remainder of said large tract.

By paragrah 3 of his cross-petition (Printed Rec., page 37) in the "Tully" suit, he averred a like *sole seizin and ownership* of a *part* only (the tract BBB in said plat) of the larger strip wherein he had, by the railroad's original petition in that suit, been alleged to be an owner or interested; and by paragraph 4 of said cross-petition made a like disclaimer of title, interest or ownership in the remainder of said larger strip; said averment and disclaimer amounting to this: that in the "Tully" suit he set up his sole seizin and ownership of so much of said

strip as lay in section 30, but disclaimed that part thereof lying in section 31.

Convers also in his cross-petitions, so filed in the State court before the removal, averred his *sole seizin and ownership* of the adjacent tract, CCC (with its slips or docks), shown on the plat; and under the settled practice in such cases (*Johnson* v. *Freeport, etc., Ry. Co.*, 111 Ill., 413) brought forward his demand for independent compensation for the deprivation of that tract, with its slips and docks, of its access to and connection with the Illinois & Michigan Canal, to ensue through the contemplated condemnation for railroad purposes of the tracts A and BBB.

All of the proceedings in the state court, up to and including the removal orders, were in full recognition of the right of Convers, as an individual owner, to have, under the statute and practice in such cases, a *separate* ascertainment of his compensation. In this connexion attention is called to the following details.

The original petition filed by the railroad in the "Grannis" suit (Printed Rec., p. 2), and also that filed by it in the "Tully" suit (Printed Rec., p. 27), each prayed "that the "compensation to be paid to the *several* owners of and persons "interested in said lands" be ascertained, etc.

In each of the cross-petitions of Convers, already referred to, he insisted on his separate and independent claim for compensation as distinct from that of all other owners or parties in the suits, and in each of them (both in response to the concordant prayer of the railroad in *its* petitions, as well as under his statutory right), he prayed "a *separate* trial and assessment in re- "spect of his said damages and of his compensation therefor."

In his petitions for removal, (in the "Grannis" suit Printed Rec., p. 17; and in the "Tully" suit, Printed Rec., 39),

Convers set up and relied on, as his title for such removal under the act of Congress, his separate citizenship of New Jersey, and his controversy in the cause "*wholly* between your "petitioner (Convers) and said The Atchison, Topeka and "Santa Fe Railroad Company in Chicago," and prayed the removal of *that controversy* to the Federal court.

The state court, by the terms of its orders in granting the prayer for removal (both in the "Grannis" suit, Printed Rec., p. 23; and in the "Tully" suit, Printed Rec., p. 42) remitted to the Federal court *solely* "the suit and controversy in the above entitled cause *between said railroad company and said Convers*," and by unavoidable consequence retained, for its own sole cognizance and adjudication, all of the controversies pending between the Railroad company and the *other* defendants in both of those suits.

The whole record *after* the removal to the Federal court (up to the rulings complained of) reiterates and emphasizes: the separate right with which Convers entered that court; his title to an exclusive trial *there* of his separate controversy, with all the incidents and privileges secured by the constitution and statutes of Illinois in the matter of that controversy; and his prerogative to a conclusive and unambiguous adjudication *there* thereon.

In that connection the court will note the following particulars:

By the act of Congress (Removal Act of March 3, 1887) under which alone the Federal court could proceed one step in the causes, the controversy must be (Sec. 2) "a contro- "versy *wholly* between" Convers and the Railroad company, "and which can be *fully* determined as between them."

No party other than Convers participated in the removal proceedings. Nor did any parties except himself and the

Railroad Company appear in the Federal court, or participate in the trial, or in any of the proceedings in that court. (Paragraph 19 of Bill of Exceptions; Printed Rec., p. 56.) Nor was any question as to his right to the removal, or motion to remand, ever made.

Convers was, after the removal and up to the rulings objected to, always recognized by the Federal court and by the Railroad, as the sole defendant in the separate controversy so removed, and as the *dominus litis*, upon his side of that controversy.

Oct. 3, 1887, he solely filed the removed record in the "Grannis" suit, with his bond for costs, in the Federal court. (Printed Rec., p. 1.)

Oct. 3, 1887, he solely filed in the same court the like record, with his bond for costs, in the "Tully" suit. (Printed Rec., p. 26.)

Feb. 28, 1888, the Federal court heard and granted his individual motion to amend his cross-petition in the "Grannis" suit. (Printed Rec., p. 24.)

March 1, 1888, the Railroad Company and Convers alone stipulated for the consolidation of the two suits (Printed Rec., p. 44.) as the sole parties entitled so to stipulate; on which date, and upon which stipulation, the court ordered said consolidation (*Ibid*); whereupon the two suits were brought on thereunder to be heard as one cause.

It is also not without significance, that the titles to the proceedings in the Federal court recognized, (in accordance with familiar legal usage in Illinois), by the use of the words "*impleaded with*" after Convers' name, his severance in interest from the other defendants in the original causes. The titles of the controversies in the Federal court running through the record, will be found to be "The Atchison, Topeka and Santa

Fe Railroad Company in Chicago *v.* Ebenezer B. Convers, *impleaded with*, etc. (Printed Rec., pp. 43 to 56.)

The course of the trial also, as disclosed by the bill of exceptions, tells (until the rulings objected to) a concordant story.

The court and jury, under Convers' cross-petitions and disclaimers, confined their hearing to the relatively small tracts (A and BBB on the plat) which he had brought from the State court out of the larger tracts included in the original petitions of the railroad company. The Federal court and jury also entertained, and purported to find and adjudicate upon, the question of damages to the tract CCC, which question, under his cross-petitions, was originally in the State court and remained after the removals, relevant to Convers alone.

The trial likewise proceeded, until the close of the argument to the jury, in full recognition of Convers' right (as sole owner and under the allegations of his cross-petitions), separately to conduct the cause before the court and jury upon the issues involved. No question was made by the Railroad Company, or the court, as to the justice or exclusiveness of that right. His proofs, and his alone, were received and heard on the issues which he alone had brought there, and which he alone there represented.

Nor did the Railroad Company at any time on the trial controvert Convers' absolute title to the small strips there in question. That title was, until the close of the proofs and arguments to the jury, tacitly conceded. The Railroad Company rested its case in chief without *any* proofs or inquiry as to that title. The only proofs as to title were those tending to show Convers' possession.

If the Railroad Company (the actor in the proceedings), intended in the Federal court to raise any issues as to Con-

vers' technical title, or against his exclusive right to represent the particular strips of land and special damages brought by him into that tribunal under the removal, then well-settled rules of practice (to say nothing of common fairness), required that is should *seasonably* have raised those questions.

It is respectfully urged that neither due procedure, nor common good faith, could allow a contrary practice, or permit the railroad company to lie by with such questions (assuming for the argument that they existed), for months after the removal, and up to the close of the proofs and arguments on an extended trial. It might seem subtile, *then* to spring them into the case (after the door to proofs was thought to be closed); but it is conceived that such subtility cannot have success. The whole previous record was an estoppel against any such device.

Had any such questions as to title been seasonably raised, they could have been fully met and disposed of.

It is to be justly presumed (and it is therefore here asserted) that Convers did not on the trial produce his title deeds, and make full technical proofs of his paper title in fee simple absolute, *because* no question or issues requiring them had been raised in the case. The burden cast on the Railroad company to raise such issues, and the presumptions to be reasonably entertained on its failure to do so, are illustrated by rulings in the cases cited (under V.) on p. 25, *ante*.

It must not, however, be deemed conceded, by what has been said, that Convers' proofs were, on the whole case as it went to the jury, insufficient, even had his title been expressly and seasonably put at issue in the cause. The contrary is earnestly insisted.

Attention is called, in this connection, to the state of the proofs before the jury, as disclosed by the bill of exceptions. The bill shows (as already mentioned), that the railroad com-

pany rested its case in chief without any inquiry, proofs or objection as to Convers' title. (Paragraph 6 of Bill of Exceptions; Printed Rec., p. 50.) Convers' proofs, however, *did*, as the bill discloses, embrace evidence tending to show that at the date of the filing of the original petitions (to which date the proceedings must relate; see *Chicago, etc., R. R. Co.* v. *Catholic Bishop*, 119 Ill., 525), he was, by his tenants, in possession of the tracts A and B B B, and was then also in the exercise of acts of ownership over the tract C C C. (Paragraph 7 of Bill of Exceptions; Printed Rec., p. 50.) The railroad company introduced *no* proofs in rebuttal. (Paragraph 8 of Bill of Exceptions; Printed Rec., p. 51.) The authorities applicable to those proofs have been already cited (under V) on p. 25, *ante*.

After this long train of preliminaries, each in recognition both of Convers' title and of his independent standing in the Federal court, it was, after the close of the proofs, and at the conclusion of the arguments to the jury, for the first time and to his great surprise, disclosed by the form of the verdict tendered by the railroad company, that the attempt was to be made to discard him in that court as having any separate controversy therein, or as having any necessary title to the compensation and damages to be ascertained by the jury, in the trial which he had originated in that court, and had there separately conducted!

The bill of exceptions discloses his strenuous objections and struggles, unsuccessfully made against this manœuvre; as well as what are respectfully believed to be extraordinary and erroneous rulings of the court below thereon. (Paragraphs 9, 10 and 11 of Bill of Exceptions; Printed Rec., pp. 51 to 53.)

With whatever relevancy to the review in *this* court, the same objections, including the challenge of the jurisdiction of the court so to proceed, were carefully and specifically renewed

in the motions for a new trial (Printed Rec., p. 54), and in arrest of judgment (Printed Rec., p. 55), pressed upon the court below, but overruled.

There thus finally resulted in respect of Convers a total mistrial of *his* separate controversy which he had brought into the Federal Court, as well as a verdict and adjudication which is wholly silent as to *him* or *his* just compensation and damages; compensation and damages which the organic law had declared in his behalf should be ascertained by the jury. Had the jury, even in terms *denied* him compensation, that would have been to the point of his right. But, under the instructions of the court, the jury could neither affirm nor deny it.

The theory of the learned judge below, that this constitutional right of Convers to have the jury specifically find upon *his* compensation and damages, could be repealed or displaced by some contrivance under which the jury should exercise a function (without regard to the parties before the court), to set a price on the land in gross, and to assess damages in gross, and by which these gross amounts should be subsequently carved out or awarded by *the court* to such persons ("whether "Convers or others") as it should in some later proceeding hold entitled to the land, had its course, it is submitted, not only in misapprehension of the requirements of the organic and statutory law of Illinois already pointed out, and of the rulings of its judiciary thereon, but also in oversight of the jurisdictional limitations on the Federal court in respect of parties.

The consequence of such a theory would be appalling.

By the law of Illinois (See I, p. 19, *ante*) the proceeding is in its nature *in personam*. No one is bound or affected who is not brought before the court. No owner but Convers *was* before the Federal court. Can it be supposed, under these circumstances, that the general finding and judgment of that court and jury could have force and relevancy as against any

owner in the strips other than Convers? If not, then the finding and judgment should have responded to him alone, and were bad in that they did not so respond, but confused his right with that of others.

Concede, in aid of the argument as against his separate right in the trial, that Convers' interest in the strips in question was "by mazy involutions thrice involved" with that of the three-score and more defendants who remained in the State court after the removal, and further likewise concede, that it was so involved with a different relation to each of those defendants:—for example, that Convers was, in different parts, the landlord of one, the tenant of a second, the mortgagor of a third, the judgment debtor of a fourth, the vendor by executory contract of a fifth, etc. Or further in like manner concede, that his title was encumbered in fifty different ways. Or, to conclude, let it be supposed that he had absolutely *no* title at all. What valid result can come out of the theory set in motion below? Will the court (with gravity) undertake to distribute the fund on the footing that all parties, "whether "Convers or others," are bound by the *quantum* of a compensation and damages ascertained by a jury before whom the "others" were neither called nor heard?

Or suppose (under the same hypothesis of other ownerships in the tracts), that Convers, ousted by the judgment below from his possession of the land, should under this theory seek to set up his right against the fund in gross, which the judgment (without any definition of title thereto in respect of any named person) ordered to be paid to the county treasurer: upon what footing of valid or ascertained obligation, as against such other owners, shall he proceed? As respects *them* the whole fund and transaction stand *res inter alios acta*, and without legal relevancy or binding force.

Under the theory set in motion below, Convers found him-

self, upon the rendition of the judgment, called upon to surrender the possession of his land without a defined title to *any* compensation. By adroit legal necromancy, he had neither land nor money.

It remains to discuss the difficulties of this theory growing out of jurisdictional limitations on the court below. (See authorities cited under VI, p. 27, *ante*.)

The sharp jurisdictional dilemma which confronted that theory was: that while, to carry it out, the learned judge "*refused to submit said separate compensation, damages or controversy of said Convers to the consideration or finding of said jury*" (Paragraph 11 of Bill of Exceptions, *ad finem*: Printed Rec., p. 53), yet, nevertheless, the paramount edict of the Removal Act of 1887 forbade him so to submit any *other*.

It is supposed that to yield to this theory and ruling of the learned judge, must result in the obliteration of all known lines of jurisdiction in the Federal Courts in respect of citizenship: lines inculcated by this court from the beginning. *Smith* v. *Lyon*, 133 U. S., 315. Without them there must be intolerable clashing and confusion of authority.

If this theory can have its course, no reason is seen why under it a Railroad company, (of necessary citizenship), may not *originally* proceed in the Federal Court for the condemnation of a large body of land, making a party thereto *one* defendant (opposed in citizenship to it) who has an ownership in the tract; and thus draw to the Federal Court (by declaring through a jury a compensation in gross to be paid by the Railroad company to the county treasurer for the whole tract), the jurisdiction so to ascertain the compensation of sixty other owners in the same tract, not appearing in the cause, or shown to possess any jurisdictional citizenship.

On the hypothesis of owners other than Convers, set in mo-

tion below, an equivalent result will have been accomplished in the case at bar. This would be a discovery in procedure indeed!

It is plain, that the difficulty in such a doctrine is not to be avoided by suggesting a lawful *consequential* or *supplementary* jurisdiction, in the Federal Court, to apportion among the sixty a fund previously ascertained by its procedure against the one. Obviously the original ascertainment of the *quantum* of that fund is as vital to the sixty as it can be to the one, and is also to the sixty of no less importance than the later question of the proportions in which that *quantum* shall be distributed after its ascertainment. The proposition that that *quantum* can be authoritatively ascertained for the sixty upon the original procedure against the one, is thought, in its bare statement, to confute itself. This court, in *Gregory* v. *Stetson*, 133 U. S. 579, 586, declared it to be "an elementary principle that "a court cannot adjudicate directly on a person's right, without having him actually or constructively before it."

In Conclusion.

The framers of the Constitution of 1870, to cure the abuses then existing, placed the safeguards already mentioned in its Bill of Rights. They declared that there must be "*compensation*"; that it must be "*just*"; that it must be "*ascertained*"; and that that ascertainment must be "*by a jury*." The subsequent addition of the words "as prescribed by law," in no particular makes these prior essential requirements subject to the will of the legislature. *People* v. *McRoberts*, 62 Ill., 38; *Kine* v. *Defenbaugh*, 64 Ill., 291.

"Compensation" *ex vi termini* imports one to be compensated. Without such a correlative the word has no practical

significance. Hence compensation cannot be "ascertained" without the ascertainment, at the same time, of the correlative right; for it is only by the accommodation and admeasurement of compensation to the particulars and incidents of that right, that it becomes an *ascertained* compensation. It will be a "just" compensation in the degree that it is commensurate in amount with those particulars and incidents. This ascertainment and admeasurement to the particular right must, under the Constitution, be "by a jury." *People* v. *McRoberts*, 62 Ill., 38. No judge can control the proceeding, so as to substitute himself in its place.

Among approved definitions of "ascertain" are: "To make "sure, or certain." (Worcester); "To free from obscurity, "doubt or change; to make sure of; to fix; to determine." (Webster); "To make certain; define or reduce to precision "by removing doubt, obscurity or ambiguity." (Century Dic.)

It is respectfully insisted, that every reasonable and benignant meaning of that word is, for the protection of the citizen, to be read into section 13 of the Bill of Rights.

The prescription in the same section, "by a jury," has its roots among the ancient liberties of the people. It responds to the stipulation in Magna Charta (Sec. 52): "If any one has "been dispossessed or deprived by us, without the legal judg- "ment of his peers, of his lands, * we will restore them to "him." By its adoption the people of Illinois in 1870, righted an abuse which had, through oversight, grown up among them, akin to that for which the fathers indicted King George: "For "depriving us in many cases of the benefits of trial by jury."

Convers, if justly with his controversy in the Federal court at all, was there by *right* and not by *grace*. His privilege (bought with the great price of Federal Union), was to have his compensation ascertained *there;* to have it there (to apply

the definitions already cited) made "certain" and "free from "obscurity, doubt or change," and "defined or reduced to "precision by removing doubt, obscurity or ambiguity;" and to have this done *by the jury*. For such a compensation only, to be so ascertained with defined right, did the organic law, and the statute and decisions under it, require him to give up the possession of his land. The miserable equivalent of unfound right accorded to him in this record, would not, it is believed, have been awarded against his will to the humblest citizen of Illinois in one of her state tribunals.

As already suggested, it is finally to be kept in mind, that this is not a case in which there was acquiescence by a defendant or defendants in the ascertainment of an entire compensation; or where the record is silent as to a demand and insistence for a separate trial and several compensation; or where the objection to the ascertainment of the compensation in gross is set up by the original petitioner, or by some one not entitled to complain on that ground.

Nor is it even a case where the record shows a mass of complicated and overlying titles within the jurisdiction of the court, to require unusual or special procedure, or to be governed by precedents, which under other statutes or in other states might be thought applicable to such a case. Even *such* a case does not prevent orderly procedure, (under the Illinois Statute and the decisions already cited), for the separate ascertainment by the jury, taking its law from the court, of every several right which may be insisted upon for compensation. Such procedure is of not unusual occurrence.

Nor does the case at bar involve a proceeding in terms against "unknown owners," or non-appearing parties, or non-residents brought in by publication and not appearing, or against persons *non sui juris* unrepresented before the court;

where a severance of compensation may not in fact be insisted upon, or is not open to definition.

Nor was the case, on the removal, pending in a court of unlimited jurisdiction in respect of parties.

The court is asked to pardon any undue solicitude which may have led to a more extended discussion of the supposed difficulties in sustaining the record, than was possibly necessary to make them clearly obvious.

CHARLES M. STURGES,
Attorney for Plaintiff in Error.

FILED.
JAN 6 1892
JAMES H. MCKENNEY

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1891.

No. 154.

EBENEZER B. CONVERS,
Plaintiff in Error,
v.
THE ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY IN CHICAGO,
Defendant in Error.

In Error to the Circuit Court of the United States, for the Northern District of Illinois.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

CHARLES M. STURGES,
Att'y for Plaintiff in Error.

GEDNEY & ROBERTS, WASHINGTON.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1891.

No. 154.

EBENEZER B. CONVERS,
Plaintiff in Error,

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY IN CHICAGO,
Defendant in Error.

In Error to the Circuit Court of the United States, for the Northern District of Illinois.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

I.

IN REPLY TO THE CONTENTION FOR DEFENDANT IN ERROR, THAT "*the verdict and judgment are right.*"

The procedure involved in *South Park Commissioners* v. *Todd*, 112 Ill. 379, was pursuant to the special South Park Charter, granted by the legislature of Illinois, Feb. 24, 1869, (see *Cook* v. *The South Park Commissioners*, 61 Ill. 115,) before the adoption of the Constitution of 1870. It is, therefore, no authority on proper procedure before a jury, under that Constitution, and under the existing Eminent Domain Act set out in the brief in chief for plaintiff in error.

In *Chicago, etc., Railroad Co.* v. *Prussing*, 96 Ill. 203, the complaint in error was by the *Railroad Company*; but if the defendant owners were satisfied with the form of the finding and judgment in that case, the Railroad Company had no right to complain. That was the necessary scope and result of that case. The Court said, on closing the opinion (p. 205): "We find nothing in the decree of which the appellant can justly complain."

Grayville, etc., Railroad Co. v. *Christy*, 92 Ill. 337, was also a case in which the Railroad Company complained, on error, of an ascertainment of compensation to owners *jointly*, to which *the owners* made no objection. It does not appear in the case that the Railroad objected *below* to the form of the ascertainment or findings.

It is to be noted, that in the case last cited the Court said: "Had the three tracts been owned by appellees separately, "then of course a separate assessment of the damage done "to each tract in favor of each owner would have been "proper." This language is believed to wheel this case, *pro tanto*, into line with those cited in the original brief for the plaintiff in error.

In *Sauer* v. *Chicago, etc., Railway Co.* 123 Ill. 293, the verdict ascertained the compensation to three named owners jointly. They brought error, urging (*inter alia*) that compensation was not ascertained to them separately. There was nothing to show that they had demanded a separate ascertainment below. The Court said (p. 298): "It nowhere "appears that the plaintiffs in error made any objection "below to the form of the verdict, or took any exception "whatever to the fact that a separate amount was not "awarded to each of them."

Neither of these cases is thought to militate against the positions and authorities stated (under IV.) on p. 22 *et seq.* of plaintiff in error's original brief. In the case at bar a single owner was before the court.

The other cases cited for defendant in error in this connexion are regarded as irrelevant, and to require no further mention.

To the citation, in behalf of defendant in error, of the Illinois statute giving a specific remedy and procedure to Cities, Villages and Towns, for the exercise of rights of Eminent Domain, it is replied:

1. The procedure at bar was not and could not be under that statute. It was, and could alone be, a procedure under Chap. 47 of the Revised Statutes of Illinois.

The fact that the Legislature on the same day prescribed two remedies with specified procedure, one for Cities, Villages and Towns, and the other for Railroad Corporations, etc., and that in the *one* remedy and procedure it included important special provisions which it excluded in the *other*: *this* fact is believed to indicate a studious intention of the Legislature, that the omitted provisions should *not* be a part of the act from which they were excluded.

It is not necessary to vindicate the objects or reasonableness of the distinctions to be found in the two remedies. It is sufficient to say *lex ita scripta*.

It is not understood that the doctrine of the construction of statutes *in pari materia* applies to such a case, so as to authorize the Court bodily to convey into a statute a section which the law making power chose (it must be presumed, under the particular circumstances, with scrupulous intention) to omit. It is the object of that doctrine to *further* the intention of the Legislature; not to thwart it.

The doctrine of alternative and cumulative remedies implies that each remedy is to run its own prescribed course. It does not imply a liberty to proceed by patch-work, or to switch from one track of procedure to the other at pleasure.

It is believed that nothing can be found in any of the authorities cited for defendant in error, which will authorize this Court to transplant Sec. 127 of Ch. 24, Ill. Rev. Stat,

into the carefully formulated procedure of Ch. 47, Ill. Rev. Stat., which excludes it.

2. If (for the sake of the argument) it should be admitted that such Sec. 127 is a part of said Ch. 47, there was nothing in the case at bar, on the trial below, to put the provisions of Sec. 127 in motion. These provisions could become operative only in case of "doubt," "contest," or "adverse claimants," in respect of the ownership of the property, etc. It is idle to talk of such incidents upon this record. It is understood to be conceded in the brief of defendant in error that *no* such doubt, contest or adverse claim appeared on the proofs below, or can be found in the record. Hence the statutory case within the purview of said Section 127, in any event did not and could not arise below.

3. If the provisions of said Sec. 127 are to be considered a part of said Ch. 47, the attempt of the Federal Court to carry them into operation must, for the reasons pointed out (under VI on p. 27 *et seq.*) in plaintiff in error's original brief, be in destruction of the jurisdiction of that Court.

4. The constitutionality of said Sec. 127 has never been passed on or determined; nor can any case be cited where under it there has been denied to a claimant, insisting on it, the constitutional guaranty of an admeasurement by the jury of a compensation according to his right, whether that right were an admitted or a contested one.

It is respectfully here again insisted, that this constitutional guaranty must in any event be kept good. Constitutional provisions are *summa lex*. They are made to be obeyed; and they must be obeyed. That, in supposed cases, it may be inconvenient to hasty suitors that they should be obeyed, is not to the point. If it be *difficult* to obey them, "the Court will try." If in any case it be *impossible*, the obligation ceases. The law does not oblige to impossibilities. An impossibility is always *casus omissus*.

II.

IN REPLY TOUCHING THE CONSEQUENCES OF THE ERRORS IN THE RECORD.

Procedure under the Illinois Statute of Eminent Domain is expressly held to be a procedure *at law* (*Union Mutual Life Ins. Co.* v. *Slee*, 123 Ill. 57); hence the incidents of that jurisdiction attach to such procedure.

It is elementary doctrine that a verdict at law to be valid, must find *certainly* and without *ambiguity* upon the questions, and *all* of the questions, at issue. It is to this end that issues are framed; that evidence is submitted; and that verdicts are found.

Interest reipublicæ ut sit finis litium. But without a clear and definite verdict this result cannot, at law, be reached; for there can be thereon no *final* and conclusive adjudication in respect of right.

This rule is necessarily the same, whether the verdict be a general or a special verdict. In *Patterson* v. *United States* 2 Wheat 221, this Court said (p. 225):

"Whether the jury find a general or a special verdict, it "is their duty to decide the very point in issue."

In *Prentice* v. *Zane's Administrator*, 8 How. 470, this Court said (p. 484):

"A verdict, says Coke (Co. Litt. 227, *a*,) finding matter "uncertainly and ambiguously, is insufficient, and no "judgment will be given thereon. A verdict which finds "but part of the issue and says nothing as to the rest, is "insufficient, because the *jury* have not tried the *whole* "issue. * * In all special verdicts the judges will not "adjudge upon any matter of fact but that which the jury "declare to be true by their own finding."

All actions at law (whether technically *possessory* or not), in their substance necessarily insist on the establishment, or denial, of a certain, differentiated and exclusive right to

the thing in controversy, (whether money or property), as between the parties to thecause. Their whole scope and purposes is that *possession* may be *enjoyed* by ascertained and adjudicated right, and that it may be with certainty *delivered*, pursuant to the adjudication.

The foundation of exclusive right, *at law*, is the verdict. On it both judgment and execution must be built. If it be invalid, upon a review in error, the whole superstructure falls.

It is of the essence of a verdict that it shall find the *title*, as between the parties, to the matter or thing in controversy.

Comyns says (*Com. Dig. Pleader*, S. 20): "A verdict is "void which finds the matter so imperfectly that there does "not appear a good title for the plaintiff."

So, if the issue be which son is *heir*, and the verdict find that B. and C. are the *sons*, but does not find which is the eldest son, the verdict is void.

Comyns' Dig. Pleader, S. 20.

So, if in ejectment, the jury do not find with such precision in respect of boundaries as that *possession* may thereupon *be with certainty delivered*, the verdict is bad, and a *venire de novo* must be awarded.

Clay v. *White*, 1 Munf. 162.

So where, in *detinue* for slaves, the jury found a special verdict; but as to some of the slaves omitted to find a fact essential to the ascertainment of whether the plaintiff was *entitled* to them, or not, it was held that the verdict was bad, and that a *venire de novo* must be awarded.

Robinson's Adm'r v. *Brock*, 1 Hen. & Munf., 213.

A verdict cannot be supported which leaves unascertained a matter of fact essential to an adjudication of the

right, as between the parties, to the matter or thing in controversy.

Blake v. *Davis*, 20 Ohio, 231, 249.

If a special verdict do not find *all* the facts upon which the right of a plaintiff, or a defendant, to recover is founded, it is bad, and cannot be aided by a reference to evidence or extrinsic facts contained in the record.

Lee v. *Campbell's Heirs*, 4 Porter, (Ala.) 198.

In *Tunnell* v. *Watson*, 2 Munf. 283, there was a special verdict which failed to find an exclusive title in the plaintiff. Held, that the defect could not be supplied by intendment; and that there must be a *venire de novo*.

A special verdict must find *all* the facts necessary to establish the title of the person for whom the judgment thereon is to be rendered.

Sewall v. *Glidden*, 1 Ala. (New Series), 52.

In the case last cited the Court said (p. 57): "It is a well "established principle that the Court will not aid a defective "special verdict by intending facts to have been proved to "the satisfaction of the jury, even if those facts appear "from the record to have been given in evidence. A ver- "dict is the act of the jury, and cannot be aided either by "intendment or a reference to extrinsic facts; otherwise it "might become the act of the Court. 'Such an assumption,' "(says this Court in *Lee* vs. *Campbell's Heirs*, 4 Porter's Rep. "202) 'we would consider a palpable, if not an alarming "invasion of the rights of the jury.'"

In *Tresswell* v. *Middleton*, Croke (James) 653 (cited with approval in *Prentice* v. *Zane's Administrator*, 8 How. 484), there was an action of debt for several parcels of money. The jury found that the defendant *owed* thirty pounds, and

acquitted him of the residue, but did not find in which *parcel* the thirty pounds was, so that the defendant might know of which parcel he was condemned and of which acquitted, that he "thereby might plead it in bar to other actions;" and the verdict was held bad.

In *Woolmer* v. *Caston*, Croke (James) 113 (cited and approved in 8 How. 484, *supra*), there was ejectment for three thousand acres of pasture in *Larkins*, and five closes *per nomina*. There was a verdict that the defendant was not guilty as to *part*, and as to the *residue*, they found specially; but it could not be distinguished from the verdict of *what* the defendant was acquitted, or *what* the residue was. The verdict was adjudged bad.

A verdict will be bad if it find the matter in issue only by argument and inference.

Comyns' Dig. Pleader, S. 22.
Rowe v. *Huntington*, Vaughan Rep., 66, 75.
Langley v. *Warner*, 3 N. Y. (3 Comst.), 327, 329.

If a jury find but a *part* of the matter put in issue, and say nothing as to the rest, the verdict is bad.

Rex v. *Hayes*, 2 Lord Raym., 1518, 1521. (Cited by this Court in 8 How., 484, *supra*).

Nor will the Court look into the evidence to supply from it some fact which the jury did not find; although the evidence be ample.

Barnes v. *Williams*, 11 Wheat, 415.
Harden v. *Fisher*, 1 Wheat, 300, 303.
Prentice v. *Zane's Administrator*, 8 How, 470.
Graham v. *Bayne*, 18 How., 60.
Sun etc. Insurance Co. v. *Ocean Ins. Co.*, 107 U. S., 485, 501.
Hodges v. *Easton*, 106 U. S., 408.
United States v. *Jackalow*, 1 Black, 484.

In *Thayer* v. *Society of United Brethren*, 20 Penn. St., 60, Black, C. J., said (p. 63): "Whatever is not *found* in a

"special verdict must be taken *not to exist*. It is useless to "talk of what was *proved*. We can do nothing but send "the cause back for a new trial."

If a verdict be defective in substance, it cannot be cured by amendment. No process of addition, subtraction or substitution can be practiced on it by the Court.

Garland v. *Davis*, 4 How., 131, 146.
Rex. v. *Woodfall*, 5 Burr, 2661, 2669.

When a verdict is defective in substance, or there has been a substantial misdirection of the Court to the jury, there must always be a *venire de novo*.

The cases already cited amply illustrate this. To them may be added the early cases of:

Chesapeake Ins. Co. v. *Stark*, 6 Cranch, 268, 273.
Livingston v. *Maryland Ins. Co.*, 6 Cranch, 274, 280.
McArthur v. *Porter's Lessee*, 1 Pet., 626.

"If the verdict, whether general or special, is imperfect, "by reason of some ambiguity, or by finding *less* than the "whole matter put in issue * the Court will award a *venire* "*de novo*."

Bacon's Abridgment, Verdict, E.

In the early case of *Hudson* v. *Guestier*, 6 Cranch, 281, 285, (note *ad finem*), the precedent was established which is understood never to have been since departed from in this Court.

"*Harper* stated that one of the judges of the Court below "had doubted whether, when a case is reversed upon a bill "of exceptions and remanded, the Court below ought to "grant a new trial.

"*Marshall, C. J.* If it be upon a special verdict, or case "agreed, the Court above will proceed to give judgment.

"But when a verdict in favor of a plaintiff is reversed, *on a* "*bill of exceptions to instructions given to the jury*, there must "be a new trial awarded by the Court below."

In *Lanusse* v. *Barker*, 3 Wheat, 101, the Court below charged against the plaintiff, and there was verdict and judgment accordingly. This Court found error, and reversed the judgment awarding a *venire de novo*. It was sought to obtain from this Court, (by consent of parties), a mandate to the Circuit Court to enter a specified judgment for the plaintiff, pursuant to a formula in respect of the facts. This Court refused to perform this function, giving among other reasons (p. 148): "Nor will this Court be led into the "exercise of a power so nearly approaching the province of "a jury in assessing damages."

It is the settled practice to reverse the judgment and award a *venire de novo* where the record shows that the issue between the parties has not been tried.

Fowle v. *Common Council, etc.*, 11 Wheat. 320, 324.

In the case at bar, the necessary effect of the direction of the Court to the jury, was to exclude from them, (so far as the right of the plaintiff in error to compensation was concerned), every item of evidence in the cause.

Where there is *some* evidence tending to prove a right in controversy, the trial judge must submit it to the jury, irrespective of its weight. On his refusal so to submit it, the judgment will be reversed with the award of a *venire de novo*.

Richardson v. *City of Boston*, 19 How. 263.
Deakely v. *Dregg*, 8 Wall. 242.
Dickin's Lessee v. *Mahana*, 21 How. 276, 283.

In *Richardson* v. *City of Boston*, *supra*, this Court said (p. 269): "If this were not so, the *Court* might usurp the de-

"cision of facts *altogether*, and make the verdict but an echo "of their opinions."

In the Circuit Courts of the United States, in actions at law, parties are constitutionally entitled to have *all* the material issues of fact tried by a jury. No interference of a judge with this right can be tolerated. If there have been such an interference, a *venire de novo* will be awarded as to *all* the issues.

Hodges v. *Easton*, 106, U. S. 408.

It is deemed idle seriously to undertake to reply to the contention of adverse counsel, that the right of the plaintiff in error to compensation was not a *material issue* on the trial below.

It is also unnecessary to suggest to this Court, that U. S. Rev. Stat., Sec 701, (cited for defendant in error), does not give it the right to supply a defect, in substance, in a verdict brought before it by writ of error for review.

The cases of *Insurance Companies* v. *Boykin*, 12 Wall, 433, and *Insurance Company* v. *Piaggio*, 16 Wall, 378, (cited for defendant in error), themselves answer and conclude the argument sought to be based on them.

In the *first* of these cases the *verdict* was sufficient, and the error was in the judgment rendered thereon. A correction of the *judgment* cured the error, without a *venire de novo*. The Court said (p. 437): "But the error does not extend to the verdict."

The same was true in *Insurance Co.* v. *Piaggio*. In that case the Court said (p. 388): "Undoubtedly a special verdict "is erroneous if it does not find *all* the facts essential to the "rendering of the judgment." It later continued, "*All* the facts are *found* in this case." A new finding was therefore unnecessary, and the error was cured by a proper judgment, on the facts so found, without a *venire de novo*.

The lethal arrow still sticks in the side of the case of defendant in error (and cannot be pulled out), that Convers was entitled to a finding by the jury upon his right to compensation, and that such a finding was instructed away from him by the Court, at the instance of the defendant in error.

CHARLES M. STURGES,

Att'y for Plaintiff in Error.

Office Supreme Court U. S.
FILED.
JAN 5 1892
JAMES. H. McKENNEY,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1891.

No. 154.

EBENEZER B. CONVERS,
Plaintiff in Error,
vs.
ATCHISON, TOPEKA & SANTA FÉ RAILROAD COMPANY IN CHICAGO,
Defendant in Error.

Error to the Circuit Court of the United States for the Northern District of Illinois.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

NORMAN WILLIAMS,
CHARLES S. HOLT,
COUNSEL.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1891.

No. 154.

EBENEZER B. CONVERS,
Plaintiff in Error,
vs.
ATCHISON, TOPEKA & SANTA FÉ RAILROAD COMPANY IN CHICAGO,
Defendant in Error.

Error to the Circuit Court of the United States for the Northern District of Illinois.

INTRODUCTORY STATEMENT.

The railroad company filed its two petitions (afterward consolidated) in the State court to condemn a right of way across an entire quarter section of land, alleging that Convers and various other persons named "are the own-"ers thereof as appears by the records of said county or "have or claim some interest in said land or property."

The ownership of the various defendants was not further defined. The petitions followed the statute, which requires the petitioner to set forth in his petition "the names of all the persons interested in the land as "owners or otherwise, as appearing of record, if known,

"or, if not known, stating that fact." (Rev. Stats. of Ill., Chap. 47, Sec. 2.)

The same act provides (Sec. 5), that "any number of "separate parcels of property, situated in the same "county, may be included in one petition, and the com- "pensation for each shall be assessed separately, by the "same or different juries as the court or judge may "direct."

Convers filed his answer and cross petition, asserting his sole ownership of certain specified parts of the land and disclaiming all interest in the remainder, and thereupon petitioned for the removal of the "separate contro- "versy" between him and the railroad company to the Federal court. The allegations of his petition were not denied, the removal was made and trial had by jury in the Federal court, no other party defendant appearing there.

The jury, under instructions from the court, ascertained and reported the value of the *entire tract* of which Convers claimed to be the sole owner, and judgment was entered upon the verdict, authorizing the railroad company to take posssession of the tract upon paying the entire value thereof, as thus ascertained, to the county treasurer "for the benefit of the owners and parties interested in "the premises."

The statute of Eminent Domain, above quoted, contains the following provision in section 14: "Payment of com- "pensation adjudged may, in all cases, be made to the "county treasurer, who shall on demand pay the same to "the party thereto entitled, taking receipt therefor, or "payment may be made to the party entitled, his, her or "their conservator or guardian."

The sole complaint made on this writ of error is be-

cause, in the form of the verdict and in the judgment, the words "owners and parties interested" were used instead of the name of Convers. No complaint is made as to the admission or exclusion of evidence, or as to the instructions of the court laying down rules for measuring and ascertaining just compensation, or as to the amount found by the jury as the value of the entire property. No reason is suggested why any different result would have been reached or would now be reached by substituting Convers' name for the term "owners and par-"ties interested." Nor does it anywhere appear that Convers has been or will be in any way injured or prejudiced by the form employed. The record stops with the judgment, showing nothing about the distribution of the fund.

The objections made are wholly unfounded, are at best purely technical, and have no claim to the consideration of the court.

BRIEF.

I.

PLAINTIFF IN ERROR HAS NOTHING TO COMPLAIN OF.

On the record Convers appears as the only "owner or "person interested in" the property. The jury properly ascertained the *entire value*, and the judgment in effect awards that value to Convers as specifically as if his name had been used. The form of the verdict and judgment cannot possibly prejudice his rights.

II.

THE VERDICT AND JUDGMENT ARE RIGHT.

If there had been adverse claimants before the court, Convers would have had no right to a determination by the condemnation jury of the question whether he was or was not the owner. A jury impaneled under the Eminent Domain Acts of Illinois has no duty or power to pass on questions of title. Such questions are to be determined by the court or by a common law jury, as the nature of the case may require.

Rev. Stats. Ills., Chap. 47, (title, "Eminent Domain"), Sections 2, 8, 10, 16; Chap. 24 (title, "Cities, Villages and Towns"), Sections 127, 129.

The jury has nothing to do with any question except the *amount* of compensation.

Smith v. *C. & W. I. Ry. Co.*, 105 Ill., 511.
South Park Commissioners v. *Todd*, 112 Ill., 379.

Henry v. *Centralia & Chester Ry. Co.*, 121 Ill., 267.

O'Hare v. *C., M. & N. Ry. Co.* (Supreme Ct. of Ill., Oct., 1891), 28 N. E. Reporter, 925.

203.

Suver v. *C., S. F. & C. Ry. Co.*, 123 Ill., 293.

Grayville & Mattoon Ry. Co. v. *Christy*, 92 Ill., 287.

Neither the constitution nor the statutes give a right to trial by jury on questions of title.

Constitution 1870, Article II, section 13. "Private property shall not be taken or damaged for public use without just compensation. *Such compensation*, when not made by the state, *shall be ascertained by jury, as shall be prescribed by law.*"

The legislature has expressly prescribed the precise method adopted in this case, as the proper course in condemnation proceedings where there is a contest as to ownership. (Rev. Stats. Ills., Chap. 24, Section 127.)

"No delay in making an assessment of compensation shall be occasioned by any doubt or contest which may arise as to the ownership of property or any part thereof or as to the interests of the respective owners or claimants, but in such cases, the court may impanel a jury and ascertain the entire compensation or damage that should be paid for the property or part of property, and the entire interest of all parties therein, and may require adverse claimants to interplead, so as to fully determine their rights and interests in the compensation so awarded, and the court may make such order as may be necessary in regard to the deposit or payment of such compensation."

This provision, though contained in the act on Cities, Villages and Towns, is applicable to proceedings under Chap. 47 on Eminent Domain. The two acts were passed on the same day, and are *in pari materia*, and are to be construed together.

Hislop v. *Finch*, 99 Ill., 171.
Harwood v. *Bloomington*, 124 Ill., 48.
Phoebe v. *Jay*, Breese, 275.
Nance v. *Howard*, *id*., 242.
Anderson v. *C., B. & Q. R. R. Co.*, 117 Ill., 29.
Young v. *Stearns*, 91 Ill., 221.
People v. *Hazelwood*, 116 Ill., 319.
Cath. Cong. v. *Germain*, 104 Ill., 445.

The Eminent Domain Act expressly provides (Sec. 16):

"This act shall not be construed to repeal any law or part of law on the same subject passed by this general assembly, but, in all such cases, this act shall be construed as providing a cumulative remedy."

III.

THERE IS NO DEFECT OF JURISDICTION.

Barney v. *Latham*, 103 U. S., 205.
City of Chicago v. *Hutchinson*, 15 Fed. Rep., 129.

IV.

THE ORDER OF PAYMENT TO THE COUNTY TREASURER IS EXPRESSLY AUTHORIZED BY STATUTE.

Rev. Stats. Ill., Chap. 47, Section 14.

"Payment of compensation adjudged may, in all cases, be made to the county treasurer, who shall, on demand, pay the same to the party thereto entitled, taking receipt therefor."

V.

IN NO EVENT SHOULD A NEW VENIRE BE ORDERED.

U. S. Rev. Stats., Section 701.

Insurance Companies v. *Boykin*, 12 Wallace, 433.

Insurance Companies v. *Piaggio*, 16 Wallace, 378.

ARGUMENT.

I.

The form of verdict and judgment employed in this case is the conventional and accepted form used, we venture to assert, in nine-tenths of all the cases that have ever been tried under any of the Eminent Domain laws in force in Illinois since 1872. It is in strict accordance with law, and every consideration of justice and convenience is in its favor. If there are conflicting claims, it is the only form that protects the rights of all parties. If there are none, it can do no harm to the rights of the undisputed owner or owners. An examination of the statutes and decisions will make this abundantly plain.

The following possible states of fact are presented:

(*a.*) Convers may have been, as his petition alleges, the sole owner of the entire property, free from all liens, encumbrances and adverse claims.

(*b.*) There may have been lien-holders or adverse claimants who remained in the State court when Convers removed his separate controversy.

(*c.*) Some or all of the lien-holders or adverse claimants may have been drawn to the Federal court by the removal.

For the present purpose, (*b*) and (*a*) are precisely equivalent to each other, for parties who were not in court are for all judicial purposes non-existent. Any lienors or adverse claimants who remained in the State court were neither barred nor benefited by anything that was done in the Federal court.

In cases (*a*) and (*b*) therefore, the verdict finding the entire value of the property, and there being no one but Convers to receive it, there is no error that can possibly prejudice him. He stands as the only "owner or person "interested" who is known to the court, and the finding and judgment are as much in his favor as if he had been specifically named therein. Any definition or specification of his rights, if it changed the result at all, could only have *diminished* his compensation; for he could not have shown himself entitled to more than the entire property, and a part cannot be greater than the whole.

In case (*c*) the lienors or conflicting claimants, by the hypothesis, were before the Federal court, and it was the duty as well as the right of the court to withhold from the jury the question of their respective titles, and to protect the petitioning railroad company from the delay incident to the determination of a dispute about title, which could only be done by the exact plan that was pursued.

Now the fact is that there were no adverse claimants to the property and the case actually presented by the record is case (*a*) pure and simple. Convers does not show any adverse claims in the record; on the contrary he insists by the solemn averments of his pleadings and petition that there are none. He at least is estopped from now disputing his own statements. What possible substantial ground of complaint has he? As has been said, the verdict and judgment may give him *more* than he is entitled to, but unless a part can be conceived to be greater than the whole, he certainly has not received *less* than he is entitled to. No criticism is made upon the admission or rejection of evidence or upon the rules laid down by the trial court to guide the jury in ascertaining the entire value of the property. Nor

does it appear by anything in the record that any difficulty has arisen, or is likely to arise, to prevent Convers from drawing out of the county treasury the money deposited there under the judgment, in accordance with section 14 of the Eminent Domain act, above quoted. Indeed, *so far as the record shows it may well be that Convers has applied for and received his money in full.* There seems to be an insinuation, wholly unjustified by anything in the record, that the treasurer has refused or will refuse to do his duty as defined by the statute; that is, to pay the money to the party entitled to it under the orders of the court which placed the money in the treasurer's custody. We venture the assertion that if Convers has applied to the county treasurer, showing that he was the only party before the court when the judgment was rendered, the money was paid over to him without the slightest hesitation. If any question had been raised by the treasurer, a simple remedy would have been found in an application to the court where the case was tried, for an order directing the treasurer to pay over the money; an order which the courts enter so frequently that there is a standard form for the purpose.

This being so, we might content ourselves with the simple statement of the argument and insist that there is no error which can prejudice Convers, and none therefore of which he is entitled to take advantage. But our position will be fortified by a short discussion of the statutes and decisions of Illinois, from which it will appear that the verdict and judgment are strictly in accordance with law.

II.

In Illinois the jury in Eminent Domain proceedings has no power to pass on questions of title, or any question except the *amount* of "just compensation" for taking or damaging private property.

The quotations made from the statute by counsel for plaintiff in error are both incomplete and misleading. The expressions cited to make it appear that the jury is to determine conflicting claims to the same land, are in fact employed in the statute with sole reference to the separate ascertainment of compensation for *different tracts of land*, or *separate defined interests* in the same land, included in the same petition, as the statute allows. In the form of oath, the words "and each owner" are in parenthesis, as having no application where only one interest is under consideration.

And counsel strangely omits all mention of chapter 24, entitled "Cities, Villages and Towns." That act was passed and went into effect on the same day with the Eminent Domain Act. The two statutes are *in pari materia*, and must be construed together. It is expressly provided in the Eminent Domain Act, Sec. 16: "That this act shall not be considered to repeal any law or part of law upon the same subject, passed by this general assembly, but in all such cases this act shall be considered as providing a cumulative remedy."

Section 127 of chapter 24, was designed to meet the difficulty arising from conflicting ownership. It provides:

"No delay in making an assessment of compensation shall be occasioned by any doubt or contest which may arise as to the ownership of the property, or any part thereof, or as to the interests of the respective owners

or claimants, but in such case the court may impanel a jury and ascertain the entire compensation or damage that should be paid for the property, or part of property, and the entire interests of all parties therein, and may require adverse claimants to interplead so as to fully determine their rights and interests in the compensation so ascertained. And the court may make such order as may be necessary in regard to the deposit or payment of such compensation."

The importance of some such provision will be apparent at a glance, and it applies as well to railroads as to municipalities. The whole theory of Eminent Domain rests upon the basis of public necessity. It is the exercise of prerogative power, and in this respect there is no difference between the delegation of it by the state to a municipal corporation and to a railroad corporation. In either case it is only given in furtherance of a supposed public interest. If then the construction of a public improvement, such as a street or a railway, could be postponed for the settlement of disputes about the ownership of the property to be condemned, the purpose of the law would substantially be defeated.

The whole course of legislation recognizes the paramount importance of *speed* in the accomplishment of such public improvements as require the intervention of this sovereign power of Eminent Domain. Not even the ordinary terms of court are allowed to interfere, but elaborate and effective provision is made (Eminent Domain Act, Chap. 47, sections 3 to 7) for the commencement and trial of condemnation cases *in vacation*. If the prompt securing of a railroad right of way was deemed so important that even the orderly arrangements and processes of courts must be interrupted to prevent any delay therein, it would be strange, indeed, if it were in the power of the property owner to delay and substantially

defeat the proceeding by raising a cloud upon his title and insisting upon the settlement of conflicting claims before the ascertainment of compensation. It cannot be doubted that common sense and public necessity combine to require just such a provision as that contained in Sec. 127, and that that provision, from the nature of the case, applies to all condemnation proceedings.

That the Eminent Domain Act and the City and Village Act are to be construed together does not admit of a doubt, either upon the most familiar principles of general law or under the decisions of the Illinois courts. The two acts were passed by the same General Assembly on the same day, and went into effect together. The doctrine that statutes *in pari materia* should be construed together, has been nowhere recognized more fully or applied more vigorously than in Illinois. It is so held in respect to statutes passed not only together, but at different times, and even where one has been repealed but still throws light on the meaning of another. The doctrine is very strongly asserted in the very first volume of Illinois reports,

Phoebe v. *Jay*, Breese Rep., 275.
Nance v. *Hazard*, *id.*, 242.

These were cases in which the slave legislation of the state was under review. The same doctrine is laid down with specific relation to eminent domain proceedings, in *Hislop* v. *Finch*, 99 Ill., 171; *Harwood* v. *Bloomington*, 124 Ill., 48. It has also been applied in a great variety of other cases, of which the following are examples.

Young v. *Stearns*, 91 Ill., 221. The act organizing the Appellate court, which appeared to deny the right of appeal in certain cases, was modified by construing it to-

gether with the Practice Act passed at the same session of the legislature.

Commissioners of Highways v. *Commissioners of Highways*, 100 Ill., 631. A section of the Highway Act which in broad terms imposed a liability for all bridges across county lines, was narrowed by reading it in connection with another section which indicated the legislative intention to confine such liability to cases where the bridges had been built by agreement.

St. Peter's Cath. Congregation v. *Germain*, 104 Ill., 440. A religious corporation organized under an act of 1869, containing no limitation upon the amount of land which may be held, but expressly authorizing the corporation "to receive, hold, dispose of and convey any kind "of property, subject to any limitation or modification "which may *hereafter* be enacted by general law as to the "amount of real estate to be held," was held bound by a limitation *previously existing* under an act of 1845.

Anderson v. *C., B. & Q. Ry. Co.*, 117 Ill., 26. An act of 1873 providing that "*all* bridge structures across any "navigable streams, etc., shall be assessed by the township "assessor as real estate," was held not to apply to a railroad bridge which confessedly fell within the letter of the act, because previous legislation showed an intention that railroad bridges should be taxed in a different way.

People ex rel. v. *Hazelwood*, 116 Ill., 319. An act of 1874, provided for the organization of territory into towns. A later act of 1877, made somewhat narrower provisions for the organization of different territory into towns. The broader provisions of the former act were held applicable to towns organized under the latter, the two statutes being "read and construed together as con-

stituting one entire system and as if enacted in a single act."

The momentous constitutional question which counsel seems to enjoy discussing is not in the case.

The burden of complaint on the part of plaintiff in error is that he was deprived of his right to a jury trial, not on the *quantum* of compensation, but on the question whether he was or was not the sole owner of the property. The short answer to this is that he had no such right, either constitutional or statutory. His counsel amuses himself with a complicated logomachy upon the word "ascertain." We have no quarrel with his definitions of that word. The trouble is that he tries to give it too broad an application and insists that the jury shall "ascertain" not only the *quantum* of compensation, but the titles and interests of the parties therein. Such is not the effect of either the constitution or statutes of Illinois. There is no absolute right to a jury trial in the settlement of questions of title to land. Instances are of every day occurrence where courts of equity, without the intervention of a jury, decree the title to land as between conflicting claimants.

The legislature did not so understand the rights conferred by the constitution when it passed the City and Village Act. We have quoted Sec. 127 of that act, which in express terms denies the right of conflicting claimants to land to have their claims settled by the condemnation jury. The constitutionality of this section has never been questioned, so far as our knowledge extends. It is both a construction by the legislature of the meaning of the constitution and a declaration of the legislative policy that public improvements shall not be delayed by questions of title. In both aspects it restricts

the power of the condemnation jury in the case of conflicting titles to the mere question of ascertaining the *quantum* of compensation.

Obviously, if the plea made here by Convers were well founded, section 127 would be unconstitutional; yet every case of conflicting title that has arisen under the City and Village Act since 1872 has been dealt with under that section, and no one has whispered a word of opposition. Questions of title may or may not have to be settled by a jury trial. This depends upon their nature and the character of the proceeding in which they arise. But the one thing certain is that a *condemnation* jury cannot settle this class of questions. It is called, sworn and instructed to do one thing and no other, viz: to ascertain and report the amount of just compensation to the owners of each tract. That the court has supplemental power to distribute the fund seems to us unquestionable; or, if it were convenient to determine questions of title in advance of the hearing by the jury, that course would be unobjectionable. But whenever the determination is made, by court or jury, the twelve men who are sworn to ascertain just compensation have no power to pass upon it.

The decisions are all in harmony with this view.

Thus in *Smith* v. *C. & W. I. Ry. Co.*, 105 Ills., 511, the defendants sought to put in issue before the jury the question whether the land described in the petition was necessary for the uses of the railroad company. The trial court, on motion, struck out these portions of the answer, and the Supreme court holds that this action was properly taken.

The court says (p. 520):

"It is clear from the oath to be administered to the "jurors they are not required to pass upon any questions

See, also, *Henry* v. *Centralia & Chester Ry. Co.*, 121 Ill., 267:

"This is regarded *not as a proceeding to determine titles but merely to assess compensation and damages*, and because of the peculiar nature of our statute, we have held that it is sufficient in this proceeding to show a corporation *de facto*. The evidence introduced is clearly sufficient for that purpose. *It is true this evidence should not have gone to the jury*, but since it was sufficient to satisfy the court of the petitioner's corporate existence, what harm can it have done?

O'Hare v. *Chicago, Madison & Northern Ry. Co.* (Oct., 1891), 28 Northeastern Reporter, 925. The trial court refused to submit to the jury the questions, whether the land was required for a public purpose and whether the petitioning railroad company had been unable to agree with the land owner. The Supreme court affirming this ruling said:

"*The sole purpose of a condemnation proceeding is to ascertain the just compensation to the land owner for the property taken, and the statute contemplates the submission of no other question in such cases to the jury.*"

The court further holds that it is immaterial whether the trial court hears evidence on other questions before or after the compensation has been ascertained by the jury, and affirms the judgment in this case, although when the jury was impaneled and ascertained the compensation, it had not yet been shown that the petitioner was unable to agree with the land owner, a fact which was essential to the jurisdiction of the court.

Supreme court sustained the claim, in the following language:

"The hearing upon the claim of Baker seems to have been purely an *ex parte* affair, and the evidence before us shows that the claim itself was not well founded; but even if it had been, the commissioners had no authority

the power
flicting tit
quantum o

Obviousl
founded, se
case of con
Village Act
section, and
Questions of
jury trial. T
acter of the p
thing certain
this class of q
to do one thin
the amount of
tract. That th
tribute the func
convenient to d
the hearing by
tionable. But
by court or jury
tain just compen

The decisions

Thus in *Smith*
the defendants so
question whether
necessary for the
trial court, on mot
answer, and the Su ..... that this action was
properly taken.

The court says (p. 520):

"It is clear from the oath to be administered to the "jurors they are not required to pass upon any questions

"except such as affect the matter of damages. The oath "prescribed by the statute is in these words, 'You, and "each of you, do solemnly swear you will well and truly "ascertain and report just compensation to the owner "(and each owner) of the property which it is sought to "take, and to each person therein interested according to "the facts in the case, as the same may be made to ap-"pear by the evidence, and that you will truly report such "compensation so ascertained, so help you God.' It is "clear from the wording of this oath, if the jury were re-"quired to pass on any questions of fact raised by an an-"swer, and not relating to the *amount of compensation* to "be paid to the defendants in the petition, the jury would "not be acting under oath as to such additional matters, "for the oath by its express terms is confined to the "question of compensation."

In South Park Commissioners v. *Todd*, 112 Ill., 379, the Park Commissioners commenced proceedings to condemn certain lots owned by Pierce and subject to a mortgage held by Todd. Under a special provision in the park charter the assessment was made by condemnation commissioners, and (through bad faith, as was claimed,) neither the owner of the fee nor the mortgagee had any notice of the proceedings. The condemnation commissioners, however, entertained a claim made by one Baker to the proceeds of the property, and they took upon themselves to award the money to this claimant by their finding and report, whereupon it was paid to him by the Park Commissioners. In subsequent proceedings the mortgagee claimed the right to be paid by the Park Commissioners, notwithstanding this previous payment, and the Supreme court sustained the claim, in the following language:

"The hearing upon the claim of Baker seems to have been purely an *ex parte* affair, and the evidence before us shows that the claim itself was not well founded; but even if it had been, the commissioners had no authority

to adjudicate upon a question of that kind. Their duty was simply to assess the damages or amount of compensation the owner of the lot was entitled to, leaving the settlement of that question to some other tribunal. * * * This money having been paid over to Baker without authority of law and in derogation of Todd's rights, the latter is not bound by it, and the Appellate court properly held that appellant must pay it again."

In *DeBuol* v. *F. & M. Ry. Co.*, 111 Ill., 503, an effort was made to get before the jury the question of the necessity of land sought to be condemned for the railroad company's purposes. The Supreme court said: "That "was not a question for the jury to pass upon. The only "question for the jury was the *amount of damages* to be "awarded appellant as ruled in *Smith* v. *C. & W. I. Ry.* "*Co.*, 105 Ill., 511."

See an intimation that a condemnation suit is not the place to try title, in *Ry. Co.* v. *Haslam*, 73 Ill., 494.

So in *C. & W. I. R. R. Co.* v. *Prussing*, 96 Ill., 203, the railroad company filed its petition alleging that Prussing, the city of Chicago, and the county of Cook, are persons who own or claim to have an interest in said property. The amount of compensation ascertained was $500 and of damages to other property $1,000, whereupon it was ordered that petitioner might enter into possession, etc., on payment of said sum to the county treasurer for the benefit of the owners or those interested in the property. An appeal was taken by the petitioning railway company, which objected on the ground that Prussing had not proved his title. The Supreme court, after intimating that there was sufficient proof of his title, goes on to say:

"But this proof of title seems immaterial when we examine the character of the order. The order is that the money be paid to the treasurer of Cook county for the benefit of the owners or those interested in it. There is no decree here that Prussing owns the property. The

only matter in judgment is that the property was needed for the corporate purposes of the railroad and that the amount fixed by the court would be a reasonable compensation to be paid to the owners for the use of the property in the manner proposed."

An interesting side-light is thrown on this proposition by *Suver* v. *C., S. F. & C. Ry. Co.*, 123 Ill., 293. The verdict was in the following terms: "We the jury "find the amount to be paid to Nancy A. Suver, Leonidas "G. Suver and Margaret S. Walker, as compensation "for the land taken for right of way across the 106 acres "as described in the petition, and for damages to the por- "tions of the 106 acres not taken, is $1,925." It was claimed that the verdict and judgment were erroneous on the ground that they find a gross amount of compensation and damages to the three defendants, and not to each person interested, and the particular amount to which such person is entitled. The court overruling this objection says:

"Where separate tracts of land are alleged in the petition to belong to separate persons respectively, the jury must find the compensation due each one for the particular tract belonging to such owner; but where the petition avers that a particular tract is owned by several persons, such persons will be presumed to be tenants in common, in the absence of proof to the contrary, and in such case the verdict may find a gross amount to be paid to the tenants so presumed to be tenants in common." (Citing *G. & M. R. R. Co.* v. *Christy*, 92 Ill., 337.)

The cases so numerously cited by plaintiff in error in respect to the right of each owner or person interested to a separate ascertainment of his damages, have no bearing whatever on the question now under discussion. In only two of them is there any, even incidental, mention of such a right. The others were all cases where, so far as the report shows, only a single specific interest was

sought to be condemned. No one has ever doubted, so far as we know, that a less estate than a fee may be condemned and that the owner of such estate, if ascertained, is entitled to his damages. It is a very different thing to say that several persons claiming *the same estate adversely to each other* can have their controversy settled by a condemnation jury.

The two cases in which the right of a separate owner to a separate verdict is alluded to are *Bozeman* v. *T. & C. Ry. Co.*, 102 Ill., 459, and *Johnson* v. *F. & M. Ry. Co.*, 116 Ill., 521. In the former case, one tenant in common was brought into court, and insisted that the trial could not go on without the presence of his co-tenants. The Supreme court held that this plea could not prevail. It is in discussing this question that the court uses the following language:

"However many parties in interest, the amount each owner is entitled to receive as compensation must be assessed to each separately, unless the parties in interest require it otherwise. This *may* be all done by one jury and at the same time, but the question is *must* it be so done. * * * Where several tracts of land belonging to different persons are, as they may be, included in the same petition, the statute expressly provides the compensation for each shall be assessed separately, by the same or different juries, as the court or judge may direct, and we see no reason why the same principle should not be extended to cases where *different persons have* SEVERAL AND DISTINCT INTERESTS *in the same tract*. * * * We are of opinion, therefore, where a party having an interest in a tract of land sought to be condemned for public use is regularly brought into court and petitioner is ready to try the case, as to him, where no good reason appears why it should not be so tried the defendant in court is not entitled, as a matter of right, to have the case continued indefinitely, merely because there are other parties having an interest in the same land,

whom the petitioner, from mistake or otherwise, has not been able to bring into court. * * * If the petitioner is willing to run the risk of incurring the expense of another trial, and the court, under the circumstances, is of opinion that justice and convenience will be promoted by trying the case as to the parties before it, there will be no error in doing so. * * * However much error may have intervened as to the other defendants, it is a matter that in nowise affects appellants, and of which they can take no advantage in this court. For nothing is better settled than that one is not permitted in a court of review to take advantage of an error that does not injuriously affect himself."

In *Johnson* v. *F. & M. Ry. Co.*, 116 Ill., 521, a petition for condemnation was filed, in which Johnson was made a defendant solely as the husband of one who was alleged to be an owner of the land described. He filed a cross petition setting up an independent interest, which it was alleged would be damaged by the use of the property described for railroad purposes. Upon motion having the effect of a demurrer to the cross-petition, it was dismissed, and the cross-petitioner appealed. It was urged that the order was interlocutory, and that no appeal would lie, but the Supreme court held otherwise, saying:

"When the cross-petition was dismissed the new and additional interest which was thereby presented was no longer in the case, there was no pleading under which it could be considered; hence it follows that the dismissal of the cross-petition was a final disposition of the rights claimed under it. In proceedings under the Eminent Domain Act, each separate owner *may* have his damages assessed before a separate jury, and so is entitled to a separate appeal from the judgment rendered on the verdict. Such also is the case where different persons have several and distinct interests in the same tract. (Citing *Bozeman* v. *T. & C. Ry. Co.*, *supra.*)"

It will be seen that these decisions are based upon

the existence of *separate, distinct and undisputed* ownerships, either of *separate tracts of land* or of *defined interests in the same tract*. Not one of them touches the question of the right of *conflicting claimants to the same land or interest* to have their title settled by the jury in a condemnation case. It is perfectly evident from all the statutes and decisions that there is no such right.

III.

The question of jurisdiction, of which counsel makes so much, need not detain us long. In the first place, as we have said, the record here shows a petition by Convers, a resident of New Jersey, alleging that he has a separate controversy with the railroad company, a corporation of Illinois, in respect to just compensation for the land described, of which he alleges he is the sole owner. There is nothing in the record which in any degree controverts or modifies this allegation. The Federal court took jurisdiction and retained it. Counsel vehemently asserts in one part of his brief that the court could not get jurisdiction of any other person; but he seems to intimate elsewhere that there has been an attempt to take jurisdiction of other persons, by the use of the words "owners and parties interested." This is so strained and unnatural a construction that we cannot attach any serious importance to it. If it amounts to anything, it wholly defeats the jurisdiction of the Federal court, and makes it the duty of this court to remand the controversy to the State court. This action cannot be taken at the instance of Convers, because he is estopped from raising the question by the averments of his petition for removal and because he has assigned no error and saved no exception in that regard. Of course, if the court

were clearly convinced that there was here a controversy in which the rights of Convers were inseparably involved with the rights of other persons not shown to be of diverse citizenship from the petitioning railroad company, the court might remand the case of its own motion. But in order to do so it would have to be held that the mere insertion of the words "owners and parties interested" in the form of the verdict, brought before the court parties who had no business there, and so turned a separable into an inseparable controversy, thus defeating the jurisdiction. No precedent can be found and no argument can be made in support of such a proposition.

We have shown that there was no other party before the court, so far as the record discloses, but Convers. It may be conceded, for the sake of argument, that if other parties, citizens of Illinois, had been claiming title adversely to Convers, then there would not have been a separate controversy, within the meaning of the removal act. But this, as we have said, cannot be merely *imagined* into the record. It must appear there, before the court can assume its existence.

But it is by no means certain that the existence of other persons, *interested in the distribution of the proceeds* of the real estate, would make them parties to the controversy in such a way as to prevent removal. It may be true that if two persons claim the same land under adverse titles, and a corporation files a petition to condemn the land pending the dispute, both claimants are interested in the controversy, and neither could remove the case unless both had the requisite citizenship. But the undisputed owner of land covered by an undisputed mortgage (the case stated above as (*b*)), would have, as it seems to us, a separate controversy with a condemn-

ing railroad company, and could remove the case, even though the mortgagee had not the requisite citizenship. This may be open to discussion, and it is wholly immaterial on the present record. But the consideration of it may throw some light on the reason for the general adoption of the form so generally used. In the case of a condemnation against property belonging indisputably to one, subject to an undisputed mortgage held by another, our construction of the decision in *Barney* v. *Latham*, 103 U. S., 205, is that the whole controversy respecting that land would be transferred to the Federal court. The value of the property would be ascertained, and the court would distribute the proceeds as between the owner and the mortgagee, without the intervention of the jury on that subject.

It has been decided by Judge DRUMMOND, on careful consideration, that where several parcels of land are included in one petition, the removal by one owner of his separate controversy does not transfer to the Federal court the litigation with respect to the other parcels of land.

City of Chicago v. *Hutchinson*, 15 Fed. Rep., 129.

The effect of such removal on lienors or adverse claimants was not passed upon in that case.

It was, doubtless, in view of the possibility that some lienors or conflicting claimants might be drawn to the Federal court by the removal that the verdict and judgment were put in the conventional form. It would have been disastrous in the highest degree to use any other, for if the question was even doubtful, the railroad company must either delay the construction of its line until the doubts could be relieved by the slow process of an

appeal, or else run the risk of having to pay twice for the property. Suppose there had been, for example, a mortgage on the land in question, held by a citizen of Kentucky, who was made a defendant to the petition, and that it should be held that the removal carried this mortgage with it and entitled the mortgagee to be paid out of the proceeds of the condemnation. In that case a verdict and judgment in favor of Convers by name would have been flagrantly unjust, while the form that was used fully protects the interests of all; and, as we have shown, works no injury to Convers if he was in fact entitled to the whole amount.

IV.

The form of the judgment follows the form of the verdict, and is strictly in accordance with Sec. 14 of the Eminent Domain Act and with Sec. 127 of the City and Village Act. It is suggested in argument that this judgment casts upon the county treasurer the judicial duty of determining who are the persons interested in the property. We have already indicated the sufficient answer to this proposition. The Federal court had no power, and certainly did not attempt, to make an order in the air, or to turn over the property to the county treasurer for the benefit of the general public. The judgment must be interpreted by the county treasurer and by every one else in the light of the record upon which it was entered. The law reads into its designation of "owners and persons interested" the qualifying words "*who are parties to this suit.*" And if the county treasurer was in any doubt as to who were the parties to the suit, the only place to go for instructions was the court that entered the judgment.

As we have said, it does not appear that any controversy has arisen or that any objection has been made to the payment of the entire money to Convers. It does not even appear but that Convers has received the whole amount of compensation. Briefly, the question resolves itself into this: unless Convers was entitled to have the condemnation jury pass upon the question whether he was or was not the sole owner of the property, (a question which was not in issue, and which the jury could not have passed upon if it had been submitted), then the verdict and judgment are absolutely right, and he is not in a position to raise the question of the distribution of the fund because, so far as appears from the record, there has been no refusal to distribute it to him.

V.

But whatever may be said of the judgment, it is perfectly clear that the criticisms made do not substantially affect the verdict. The entire value of the property was assessed by a jury, as the constitution and laws of Illinois provide. The rulings of the court on the trial and the instructions as to the measure of compensation are not criticised. If Convers was entitled to the whole, this verdict gives him all he is entitled to. If he was entitled to a part only, he cannot complain because he gets the whole.

It is scarcely necessary to cite authority to show the power and the practice of this court in cases where a judgment is conceived to be erroneous in matters not affecting the verdict. Section 701, Revised Statutes, expressly gives

the power to enter such judgment as the court considers to be in accordance with justice; and the familiar cases of

Ins. Co. v. *Boykin*, 12 Wallace, 433, and
Ins. Co. v. *Piaggio*, 16 Wallace, 378,

are sufficient illustrations for our present purpose of the use which the court uniformly makes of its power under this section.

In no possible view, therefore, can there be any propriety in remanding the case for a new trial.

NORMAN WILLIAMS,
CHARLES S. HOLT,
Counsel for Defendant in Error.